



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.02.1996  
COM(96) 51 final

---

# **THE SINGLE MARKET IN 1995**

## **- Report from the Commission to the Council and the European Parliament -**

---

The First through the Seventh Reports (1986-1992) were published as *Report of the Commission ... concerning the implementation of the White Paper on completing the Internal Market*. The title of the 1993 report is *The Community Internal Market*. The 1994 and 1995 reports are titled *The Single Market*. The annexes to the 1994 and 1995 reports were published as *State of Community law concerning the internal market* and are on AEI-EU as separate documents. The series ends with the 1995 report.

**NOTE**

References in the body of the report to Council or Commission legislation and to Treaty articles are followed by an asterisk\* without a footnote. Full titles and references of legislation and the text of Treaty articles are given in Annex 2 to the report.

## Contents

<b>Introduction</b>	<b>1</b>
<b>Section 1 - Overall assessment of the operation of the single market</b>	<b>3</b>
§ 1 - Completing and streamlining the legislative framework of the Single Market	3
§ 2 - Making the Single Market work	4
§ 3 - Confirming the Single Market as the cornerstone of Economic and Monetary Union	5
§ 4 - Securing a Single Market for the citizen	6
§ 5 - Adapting the Single Market to technological and other change	6
§ 6 - Preparing the Single Market for enlargement	7
§ 7 - Conclusion	7
<b>Section 2 - Managing the single market</b>	<b>9</b>
§ 1 - Implementation of Community law: transposal	9
§ 2 - Enforcement of Community law	13
A. Cooperation on enforcement of Internal Market rules	13
B. Penalties for infringements of Community law	14
§ 3 - Access to justice and judicial cooperation	15
A. Training and information provided for the legal professions in the field of Community law	15
B. Access to justice for consumers	15
C. Free movement of judgements	16
§ 4 - Evaluation of the effectiveness of the legislation	16
§ 5 - Statistics	17
§ 6 - Regulatory policy and simplification	17
A. Regulatory policy and simplification of legislation	17
B. Legislative and declaratory consolidation	18
§ 7 - Communication and information policy	18

<b>Section 3 - Free movement of persons</b>	<b>19</b>
§ 1 - Abolition of controls at internal frontiers	19
§ 2 - Free movement of persons in the Community	20
A. Right of residence	20
B. Recognition of qualifications	20
C. Employment services in cross-border regions	21
<b>Section 4 - Free movement of goods</b>	<b>23</b>
<b>Instruments provided for by Community law for ensuring free movement of goods</b>	
§ 1 - Articles 30 to 36 of the EC Treaty	23
A. Introduction	23
B. The main fields in which the Commission acted to eliminate obstacles to trade in 1995	23
a) Road vehicles	24
b) Food	25
c) Chemical products	25
d) Pharmaceutical and medical products	25
e) Other types of obstacle	25
C. Action by the Court of Justice	26
§ 2 - Technical harmonization and standardization	27
A. Adoption and implementation of legislation in the various sectors	27
a) Agricultural products	27
• Veterinary and zootechnical legislation	27
• Plant health and other legislation relating to crop products and animal nutrition	27
• Plant variety rights	28
• Complaints	28
b) Capital goods	28
c) Foodstuffs	28
d) Pharmaceutical products	29
e) Chemicals	29
f) Motor vehicles	29
B. Special free movement arrangements	30
a) Dual-use goods	30
b) Agricultural products	30
C. Standardization policy	30
D. Quality, certification, and conformity marking policy	31
§ 3 - Prevention and control instruments	31
A. Prevention of new obstacles - Procedure 83/189/EEC*	31
B. Enforcement of the mutual recognition principle	32
<b>Section 5 - Freedom to provide services and right of establishment</b>	<b>33</b>
§ 1 - Services in general	33
§ 2 - Financial services	33
A. Credit institutions	33
a) Derivatives	33
b) Interpretative communication on the interest of the general good	34
B. Insurance services	35

<i>C. Cross-border credit transfers</i>	36
<b>Section 6 - Free movement of capital</b>	37
<b>Section 7 - Taxation</b>	39
§ 1 - Indirect taxation	39
§ 2 - Direct taxation	40
<b>Section 8 - The business environment</b>	43
§ 1 - Intellectual and industrial property	43
<i>A. Intellectual property</i>	43
<i>B. Industrial property</i>	44
§ 2 - Company law and financial information	45
§ 3 - Commercial communication	46
§ 4 - Media	46
<i>A. Media ownership</i>	46
<i>B. Legal protection of encrypted services</i>	46
<i>C. Audiovisual policy</i>	47
§ 5 - Protection of personal data	47
§ 6 - Information Society Services	49
<b>Section 9 - Public procurement</b>	49
§ 1 - Application of the Community rules	50
<i>A. Action by the Commission</i>	50
<i>B. Decisions by the Court of Justice</i>	51
§ 2 - Development of Community legislation	51
§ 3 - Other activities	51
<i>A. "SIMAP" project</i>	52
<i>B. Improvement of participation of SMEs in public procurement</i>	52
<i>C. Defence Procurement</i>	53
<b>Section 10 - Transport, Energy and Telecommunications</b>	53
§ 1 - Transport	53
<i>A. Air transport</i>	54
<i>B. Road transport</i>	54
<i>C. Inland waterways</i>	54
<i>D. Maritime Transport</i>	54
<i>E. Railways</i>	55
§ 2 - Energy	55
<i>A. New Internal Energy Market Legislation</i>	55
<i>B. Free Movement of Goods</i>	56
<i>C. Transposition</i>	56
<i>D. Standardisation</i>	56
§ 3 - Telecommunications	57
§ 4 - Trans-European Networks	

<b>Section 11 - The Internal Market and other Community policies</b>	<b>59</b>
§ 1 - Competition policy	59
§ 2 - Social dimension of the internal market	60
§ 3 - Consumer policy	61
A. Consumer behaviour - cross-border purchasing	61
B. Consumer policy priorities 1996-1998	62
§ 4 - Environmental policy	62
A. Integration of environment and single market policy	62
B. Approximation of laws and other Community legislation in the environmental field	63
§ 5 - Small and medium-sized enterprises	64
§ 6 - Education and Training	65
§ 7 - Research	66
<b>Annexes</b>	<b>67</b>
1 - Abbreviations and acronyms	-
2 - Community provisions cited	-
A. EC Treaty	-
B. Official Journal - references	-
3 - Judgements of the Court of Justice cited	-
4 - Recent reports, studies and surveys on the single market	-

---

## **Introduction**

This is the third Commission report on the operation of the single market. In accordance with the request of the Brussels European Council of 1993 that a report be submitted to the European Council at the end of each year, a short report on the Single Market in 1995 was submitted to the European Council in Madrid on 15-16 December. It is reprinted here as Section I of this report.

---

## **Section 1 - Overall assessment of the operation of the single market<sup>(1)</sup>**

1. The completion of the Single Market is of central importance for the Union given its potential to contribute to European growth and job creation. In 1995 a growing awareness has emerged of the Single Market's centrality in paving the way for Economic and Monetary Union, strengthening European industry's competitiveness and stimulating economic growth on the basis of sustainable development. Indeed, the Competitiveness Advisory Group, chaired by Mr. Ciampi, emphasised the urgency of accelerating the Single Market process. The prosperity of our citizens and the improvement in their quality of life depends on its full realisation.

2. Even if, taken as a whole, the Single Market is working, there are still problems in specific areas. In 1995 we have seen steady progress towards the achievement of the Single Market. Evidence from many quarters clearly shows that most companies believe that the Single Market is bringing them benefits. Concerns remain, however: they include continuing technical barriers to trade; incomplete legislation on key issues such as taxation and company law; uneven or over-bureaucratic enforcement of legislation; the need to continue to reinforce competition policy, in particular in the area of state aids and the liberalisation of public utilities; and demands for compensatory measures arising from monetary disturbances. Even more important, the Single Market has not yet been sufficiently focused on the needs of the citizens, who often are not fully aware of the opportunities it offers to them.

3. The policy of the Commission in 1995 has been organised along six lines of action, designed to give a fresh impetus to the Single Market:

- (i) completing and streamlining the legislative framework of the Single Market;
- (ii) making the Single Market work;
- (iii) confirming the Single Market as the cornerstone of Economic and Monetary Union;
- (iv) securing a Single Market for the citizen;
- (v) adapting the Single Market to technological and other change; and
- (vi) preparing the Single Market for enlargement.

4. This report reviews the progress made under each of these headings during 1995. It focuses on the main developments or problems.

### **§ 1 - Completing and streamlining the legislative framework of the Single Market**

5. Our first priority must be the completion of the legislative framework for the Single Market, including the hard core of proposals from the 1985 White Paper and liberalisation in sectors not covered by that programme. A number of examples may be cited. European business cannot yet benefit from the European Company Statute the absence of which the Ciampi Report estimated to cost business ECU 30 Billion a year. Similarly, companies and cross-front-

---

(1) This section is the text of the report on the Single Market in 1995 which was submitted to the European Council for its meeting in Madrid on 15-16 December 1995.



tier workers increasingly complain about the problems of double taxation. Yet, the Commission's proposals on these issues remain blocked despite the European Council's repeated insistence on the importance of improving the fiscal and legal environment for business, in particular SMEs. Furthermore, financial services across frontiers are inhibited by widely different fiscal regimes depriving our citizens of new products at competitive rates. The rejection in March 1995 by the Parliament of the draft directive on the protection of biotechnological inventions (2) means that our industry is at a significant competitive disadvantage. The Commission has now put forward a new initiative in this key area (3).

6. Although the interim regime has proved its value, the remaining problems reported by traders with the implementation of Value Added Tax can only be resolved with the introduction of a definitive regime. This will require fundamental changes to allow intra-Community sales to be treated in the same way as domestic sales, while ensuring that Member States' VAT revenues remain at current levels.

7. 1995 saw continuing problems with regard to controls on people crossing our internal borders. However, significant steps towards achieving the free movement of people have been taken. In July, the Commission presented three proposals to eliminate such controls (4), on the clearly stated condition that they would enter into force only when the essential security measures have been implemented. The Council also adopted two regulations relating to free movement of people: the first (Regulation (EC) No. 1683/95\*) established a model type of visa, the second (Regulation (EC) No. 2317/95\*) agreed a list of third countries whose nationals must have a visa to enter Community territory.

8. Competition policy is particularly important in certain key areas if the full advantages of the Single Market are to be realised. In the telecommunications sector, the deadline of 1998 remains as the date by which full liberalisation will have been achieved, while the use of alternative infrastructures for liberalised services will be allowed two years earlier. In 1995, there has been a welcome acceleration in the pace of liberalisation and competition in the telecommunications sector, enabling it to play its pivotal role in the creation of a European Information Society. Further progress in the gas and electricity sectors is needed. And, although the basic framework of the single transport market is in place, further measures are needed, especially for airport ground-handling facilities, railways and inland waterways. The Commission has tabled proposals to this effect during 1995.

9. However, completing the legislative framework is not the whole story. There is a growing awareness that regulators at national and Community level must also ensure better and simpler regulation. The Commission has prepared a report for the European Council on better law-making. Codification proposals involving the repeal of about 350 instruments were before the Council and Parliament by the end of 1995. The Molitor Group has also reported on legislative and administrative simplification. The application of these principles in the Single Market area is of key importance, given that the whole objective of Single Market legislation is to eliminate regulatory barriers to free movement. The considerable efforts now being made at Community level must be mirrored at national level. It is a cause for concern, for example, that 438 proposals for technical legislation at national level were notified to the Commission in 1995.

## § 2 - Making the Single Market work

10. Our citizens and business must be able to make full and effective use of the rights that have been created under Single Market law. The Commission is therefore committing major resources to monitor implementation of agreed legislation and ensure its full and effective enforcement.

(2) COM (95) 661 final, not yet published.

(3) See footnote (92) of 1994 report.

(4) COM (95) 346, published in OJ C306; COM (95) 347, published in OJ C289; COM (95) 348, published in OJ 307.

11. One of the main tools to achieve an effective and speedy resolution of problems as they arise is through increased co-operation between national administrations. A network of contact points in all national administrations covering priority sectors is now largely in place and it should increasingly help in resolving administrative and other problems across the Single Market.

12. Among the developments in 1995 was the proposal by the Commission of the Customs 2000 action programme (5) to modernise customs administrations and support cooperation between them. The Council responded positively to the Commission's request that appropriate sanctions are set to penalise infringement of Single Market rules. Furthermore, the Council recently agreed a new notification system for national measures, to come into effect in 1997, thereby strengthening the means available for tackling illegal restrictions on the free movement of goods across frontiers and ensuring that the principle of mutual recognition is respected. The need for such an instrument is clear: the number of complaints about such measures received increased from 202 in 1994 to 259 in 1995. The free movement of goods has also been facilitated by progress on European standardisation and, in the pharmaceuticals sector, by the opening of the European Agency for the Evaluation of Medicines.

13. Transposing Community directives into national legislation in all 15 Member States proceeded steadily in 1995. Taken overall, by December 1995 the Member States had adopted 93.4% of the national measures required in order to implement the Community's Single Market legislation. Member States levels of transposition of Single Market legislation vary considerably: Denmark, the Netherlands, Spain and Sweden are substantially above the Community average of 93.4%; Greece, Germany and Austria are substantially below. Regrettably, implementation of agreed Community law remains seriously flawed in some key sectors as it was last year (notably public procurement, intellectual property and insurance). Failure by Member States to honour their commitments is all the greater cause for concern the longer they persist.

During 1995, the Commission increasingly concentrated its attention on the quality of transposition. To that end, while the Commission remains committed to seeking to resolve problems in full co-operation with Member States, it has shown that it will not hesitate to initiate infringement proceedings for incorrect or incomplete transposition, and indeed in 1995 there has been a significant increase in the number of proceedings concerning the 1985 White Paper measures.

14. The Commission also intends to react quickly to complaints by individuals and businesses and to take prompt action to ensure that their rights under Community law are respected.

### **§ 3 - Confirming the Single Market as the cornerstone of Economic and Monetary Union**

15. Economic and Monetary Union means a Single Market working with a single currency, and until this is achieved the full benefits of a Single Market will not be realised. The Commission's Green Paper on the single currency (6) has given considerable impetus to the debate on the scenario for its introduction.

Financial institutions and markets have responded with comments and suggestions on all aspects of the draft reference scenario for the changeover to a single currency outlined in the Green Paper. All interested parties, including consumers, were invited to discuss the issues in detail during the autumn, providing valuable suggestions for the Commission.

(5) COM (95) 119 final, OJ No C 301, 13.11.1995 as amended by COM (95) 451 final, OJ No C 327, 7.12.1995 as amended by COM (95) 576 final, not yet published.

(6) COM (95) 333 final of 31.5.1995.

16. In the period before EMU is achieved, significant currency fluctuations, such as those that have occurred in recent years, could impair the proper functioning of the Single Market. In October 1995, the Commission firmly rejected demands for compensatory measures that would imply new barriers to trade, and considered that increased budgetary discipline and convergence of economies - that is, exactly those guidelines that are needed to achieve the conditions for the single currency - are the only appropriate response.

#### **§ 4 - Securing a Single Market for the citizen**

17. The Single Market has often been perceived as benefiting the citizens of the Union only indirectly, mainly through lower prices and wider choice of goods and services. More should be done, if the citizen is to perceive that he or she is central to the Single Market. The creation of a Single Market which benefits the citizen to the full is a key objective of this Commission. Besides the removal of frontier controls and the remaining obstacles to free movement, this includes heightened consumer protection, improved access to justice and the settlement of consumer disputes in the single market, as well as an improvement to the social and environmental dimension of the Single Market.

Several developments in 1995 contributed to this objective. New rules on cross-border credit transfers (7) will ensure a more efficient service to the citizen and small and medium businesses and provide for compensation where losses occur. The EURES network is facilitating the free movement of workers by ensuring co-operation between public employment services. Rulings by the Court of Justice confirmed that individuals who live in one Member State but earn most of their income in another must be granted the same tax treatment as residents (8). However, the recognition of qualifications is of equally fundamental importance for citizens wishing to take full advantage of Single Market employment opportunities. While thousands of individuals gain recognition of their diplomas under Community directives each year, 1995 saw an increase in the number of complaints to the Commission. The Commission will shortly propose a major simplification of the relevant legislation.

18. The Union must also communicate more effectively with the individual citizen to make clear what Europe has to offer. Substantial preparatory work was carried out in 1995 to prepare the launch in 1996 of a new initiative designed to inform citizens about the advantages and opportunities they enjoy in the Single Market. The Commission is collaborating closely with the Member States and the European Parliament in preparing ten guides for the general public. Each will provide useful general information on a particular theme, such as the citizen's right to live and work in another Member State and to enjoy health provision and equal opportunities, travelling in the European Union and buying goods and services across frontiers. Information sheets are now being prepared which will provide much more detail to help citizens know and exercise their rights.

#### **§ 5 - Adapting the Single Market to technological and other change**

19. The Single Market is not static - it will develop and our regulatory approach and administrative procedures must develop with it. A particular challenge is to ensure that this regulatory environment can keep pace with technological progress: new services and new ways of providing them are confronting the Community with new challenges.

---

(7) Common Position SEC (95) 1976 final.

(8) Case of Wielockx - See para. 135.

20. For the Information Society an appropriate regulatory framework is essential; it will give the market the confidence it needs to allow the necessary investments in the networks to be made, whilst enabling the services using the networks (such as teleshopping, home banking and distance education) to benefit fully from the opportunities offered by the Single Market. During 1995 major elements of legislation were agreed. In July the Council and the European Parliament adopted a directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46/CE)\*. The Council also reached a common position on the proposal for a directive on the legal protection of databases (9). However, there are many other issues arising in this field which need to be tackled, and the Commission has this year produced Green Papers and carried out consultations on issues such as copyright and related rights in the Information Society (10) as well as the protection of pluralism in the media (11).

21. The successful realisation of trans European Networks, with greater participation of private investment where possible, is also necessary to achieve the full potential of the Single Market. The Commission submitted a separate report to the European Council (12) on this subject. These Networks will, however, only achieve their full potential if the services offered over them are open to competition and do not remain in the hands of monopoly suppliers.

## § 6 - Preparing the Single Market for enlargement

22. A major challenge is to prepare for the successful integration of the associated countries of Central and Eastern Europe into the Single Market. A key element of the Community's pre-accession strategy is the Commission's White Paper on the Single Market (13) which was presented to the Cannes European Council. It provides guidelines for the associated countries to help them align their legislation and administrative structures with those of the Union. A Technical Assistance Exchange Information Office has been established in Brussels to provide practical help and advice.

In addition, the Union continues to help Malta and Cyprus to assimilate the *acquis communautaire* in anticipation of the opening of accession negotiations.

23. The European Union is also working towards affirming beyond its present and future borders the principle of open access on which its Single Market is founded. In the field of financial services important progress was achieved in July 1995, at the initiative of the Union, with the WTO interim agreement for the liberalisation of financial services.

## § 7 - Conclusion

24. In 1995 the Commission identified six major lines of action on the Single Market. Progress has been made towards each of the objectives, but there is much unfinished business ahead.

The Commission will in 1996 present a more complete analysis of the impact and effectiveness of the Single Market since its inception, which should provide the basis for fine-tuning and developing tomorrow's agenda.

---

(9) COM (92) 24 final, OJ No C 156, 23.6.1992 as amended by COM (93) 464 final, OJ No C 308, 15.11.1993 - Common position No 20/95, OJ No C 288, 30.10.1995.

(10) COM (95) 382 final of 19.7.1995.

(11) COM (92) 480 final of 16.12.1992.

(12) CSE (95) 571.

(13) COM (85) 310 final of 14.06.85.

**25.** However, the priorities for action are clear. They centre on the completion of the Single Market for the citizens, promoting a more effective Single Market for business, especially small and medium-sized enterprises, achieving the liberalisation of gas and electricity markets and of telecommunications, preparing for the information society, accelerating work on Trans-European Networks, assisting Central and Eastern Europe to adapt to Single Market requirements and ensuring equivalent enforcement.

To this list must now be added the challenge of streamlining the regulatory requirements imposed on businesses and individuals, in order to establish an effective, single economic and civic area without internal frontiers. There must be less but better regulation at all levels: local, regional and national as well as the Community level.

**26.** We must all step up our efforts. The Commission has done so in 1995, and now looks to the Council and the Parliament for decisions on the proposals already before them, to Member States for effective application of Single Market law, and to all interested parties for continued support for and commitment to the goal of a Single Market.

---

## Section 2 - Managing the single market

### § 1 - Implementation of Community law: transposal

27. For the Council meeting on the Internal Market on 20 November 1995 the Commission has prepared its latest report on the state of play in national transposal of the White Paper measures and other legislation that is critical for the functioning of the internal market (14).

The report includes, for the first time, comprehensive information on the new Member States, including Austria.

28. Transposing Community directives into national legislation in all 15 Member States proceeded steadily in 1995. Taken overall, by December 1995 the Member States had adopted 93.4% of the national measures required in order to implement the Community's Single Market legislation. Member States levels of transposition of Single Market legislation vary considerably: Denmark, the Netherlands, Spain and Sweden are substantially above the Community average of 93.4%; Greece, Germany and Austria are substantially below. Regrettably, implementation of agreed Community law remains seriously flawed in some key sectors as it was last year (notably public procurement, intellectual property and insurance). Failure by Member States to honour their commitments is all the greater cause for concern the longer they persist (see table I).

As in past years, most infringements result from failure to notify national measures, sometimes because the deadline for their adoption has not been met. The delay is often because of the legislation's technical complexity, combined with procedural problems specific to the decision-making process in each Member State. In the new Member States, delays sometimes occurred because their national authorities needed first to devise appropriate working methods. Once a directive has entered into effect, the Commission routinely monitors its implementation at national level. Increasingly, it is also assessing measures adopted which are notified to it, with a view to improving the quality of transposal. This may result in the Commission undertaking consultations with Member States that have failed to comply fully with the requirements, and instituting infringement proceedings where it considers this necessary.

29. With regard to the new Member States, a large proportion of the directives relating to the internal market were already included in the Agreement on the European Economic Area and subsequently in the EEA Joint Committee's Decision No 7/94 amending Protocol 47 and certain Annexes to the EEA Agreement (15). The transposition measures for these directives were therefore to be notified to the EFTA Surveillance Authority, which initiated infringement proceedings where it found this to be necessary. These procedures were transferred to the competence of the Commission (art 172 para 2 of the Treaty of Accession).

In respect of Community measures that were not included in the Agreement, the Commission will examine on a case by case basis whether or not to initiate infringement procedures..

---

(14) As in its previous reports, the Commission used a different statistical basis for assessing the transposal of the White Paper measures. This is to reflect the changes over the years to the 282 measures: ones that became obsolete were abandoned or replaced. Furthermore, each measure proposed did not necessarily lead to the adoption of a single piece of legislation: in some cases several pieces of legislation were adopted in order to implement just one measure, while in other instances the converse was true. In total, 276 pieces of legislation have now been adopted in implementation of the White Paper.

(15) Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement (OJ No L 160, 28.6.1994).

TABLE I

### State of Implementation of the White Paper Measures

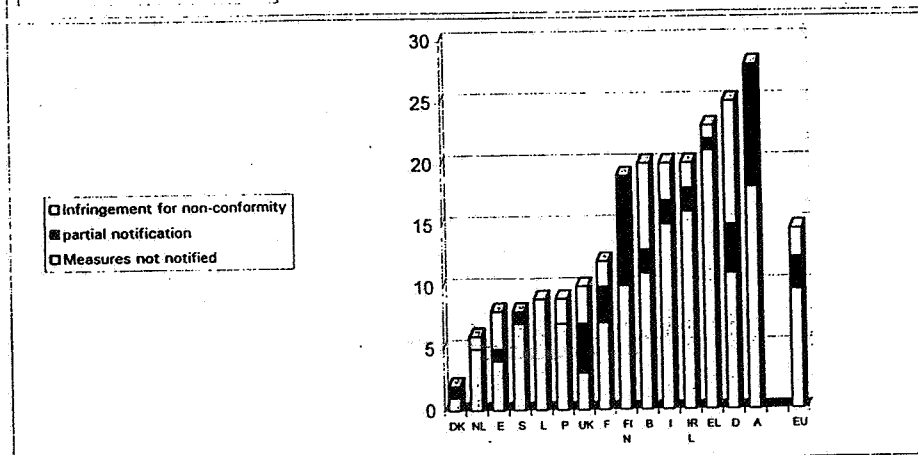
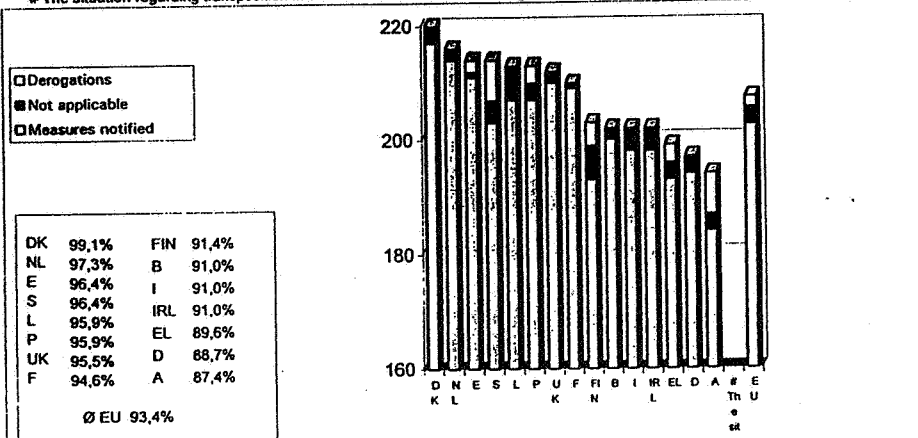
276 provisions in force / 222 requiring national implementing measures

#### Breakdown of Situation by Member State #

(31 December 1995)

	Measures notified	Not applicable	Derogations	Measures not notified	partial notification	Infringement for non-conformity
DK	217	3	0	1	1	0
NL	214	2	0	5	0	1
E	211	1	2	4	1	3
S	203	4	7	7	1	0
L	207	6	0	9	0	0
P	207	3	3	7	0	2
UK	210	2	0	3	4	3
F	209	1	0	7	3	2
FIN	193	6	4	10	9	0
B	200	2	0	11	2	7
I	198	4	0	15	2	3
IRL	198	4	0	16	2	2
EL	193	3	3	21	1	1
D	194	3	0	11	4	10
A	184	3	7	18	10	0

# The situation regarding transposition in the new Member States is being reviewed in the light of bilateral meetings in early 1996.



30. The extent of transposal also varies between sectors (see table II). Those in which there are considerable delays include:

- **Insurance:** the persistent delays are not in the new Member States, where transposition is proceeding fairly satisfactorily. But some progress is being made in transposing the "third generation" Directives establishing a single market in insurance: Directives 92/49/EEC\* (non-life) and 92/96/EEC\* (life). Greece is now the only Member State not to have notified measures transposing these Directives. However, this is not to say that their transposal elsewhere is full and satisfactory in all cases: there have been several instances of incomplete notification and incorrect transposition, and the Commission has already initiated some infringement proceedings against the Member States concerned.

It should also be noted that the Court of Justice found against Greece for non-transposal of Directives 90/618/EEC\* (freedom to provide services in respect of motor insurance), 88/357/EEC\* (second non-life Directive) and 90/619/EEC\* (second life Directive) (16).

- **Public procurement:** the deadlines for transposal are rarely met and there have been several cases of incorrect transposal. Measures are regularly notified several months late or more. There are currently 15 instances of directives not yet having been transposed despite the deadline having passed, in some cases years ago. This is particularly true of the services Directive (92/50/EEC\*), the new supplies Directive (93/36/EEC\*) and the new excluded-sectors Directive (93/38/EEC\*), which remain untransposed by five, five and four Member States respectively. In 1995, some 26 infringement cases have resulted from failure to notify national measures adopted in implementation of the Directives. In addition, examination of the measures notified has resulted in 14 further infringement cases for incorrect transposal, making a total of 30 such cases currently under consideration. Some of these are so fundamental as to call into question the openness of public contracts already awarded in the Member States concerned.
- **New technologies and services:** the relevant Directives have been transposed with considerable delay and often after infringement proceedings were instituted. In some cases, there are genuine problems of interpretation: for example, Directive 90/387/EEC\* was long regarded by a number of Member States as a framework directive that did not have to be transposed. Also, several Member States that are currently in the process of overhauling their general regulatory framework for telecommunications have chosen to transpose the complex Directives (91/263/EEC\* and 92/44/EEC\*) in a piecemeal fashion. This approach can give rise to ambiguities owing to a lack of consistency between the various national measures chosen to transpose one and the same Directive. On the whole, telecommunications law has not been satisfactorily implemented, causing delays in the achievement of the general objectives of European telecommunications policy. Various actions are being taken by the Commission in order to improve the state of implementation, and to ensure that application by Member States is more correct and effective. This includes both stricter application of internal operating procedures and reinforcement of necessary bilateral contacts, as well as efforts to increase (through specific workshops) awareness of the need for full implementation of telecommunications legislation and to stress also in this context the importance of the direct effect principle as a remedy against both the failure to implement, and incorrect implementation of Community telecommunications directives.
- **Intellectual and industrial property:** transposal is subject to quite significant delays and often follows the institution of infringement proceedings. More particularly, the delay in transposing Directive 89/104/EEC\* on trade marks was influenced by the adoption of the Regulation on the Community trade mark.

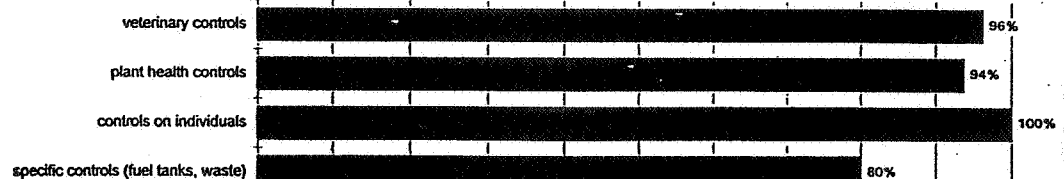
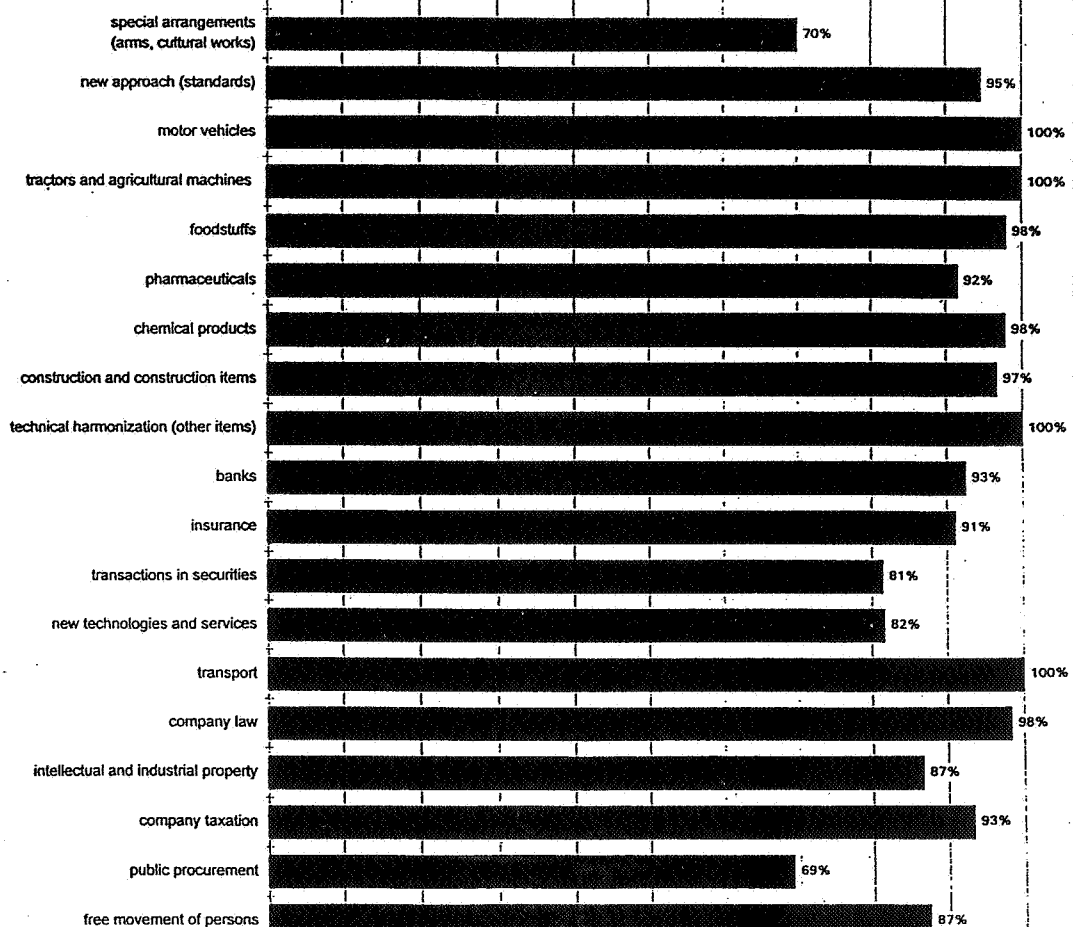
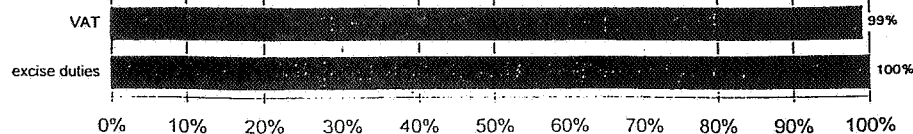
(16) Joined Cases C-109/94, C-209/94 and C-225/94; judgment delivered on 29 June 1995.



TABLE II

## State of Implementation of the White Paper Measures

Situation by sector  
(31 December 1995)

physical barrierstechnical barrierstax barriers

## § 2 - Enforcement of Community law

### A. Cooperation on enforcement of Internal Market rules

31. Homogeneous enforcement of Community rules on the internal market across the Union remained a high priority for the Commission during 1995. The main tool used to achieve this was the promotion of mutual confidence between national enforcement authorities by helping them to operate in partnership with one another and with the Commission.

32. Under the Council Resolution of 16 June 1994 on the development of administrative cooperation in the implementation and enforcement of Community legislation in the Internal Market (17) the Commission had been called upon to play a leading role in the practical organization of cooperation between the competent administrations of the Member States and the Commission to this effect. The Member States, for their part, had been called upon to notify to the Commission by the end of 1994 contact points and essential information on their administrative structures (for enforcement of the rules). The Member States and the Commission were called upon to pursue actively their programme of discussions aimed at identifying needs and agreeing on practices sector-by-sector.

This exercise concentrated initially on eighteen priority areas and contact points for the vast majority of these areas were notified by the Member States during 1995. However, very little information on enforcement structures was provided. The Commission incorporated this information into a database and distributed the lists for each area of legislation to the Member States' representatives on the committees and working groups concerned.

The programme of discussions has continued and the practices employed in those sectors where cooperation was already well developed, such as veterinary and foodstuffs controls, customs and taxation, have been examined to see whether aspects of them could be transferred to other sectors. In particular, the introduction of computerized networks, including the use of electronic mail, has become more widespread. This was given a further impetus by the agreement in the Council on a Decision adopting a multiannual Community programme to support the implementation of trans-European networks for the interchange of data between administrations (IDA) (Decision 95/468/EC\*). This decision, which was to be adopted early in November 1995, will provide funding for a number of enforcement networks, including the SHIFT system for veterinary controls on the external frontiers.

The Commission services have prepared a progress report<sup>(18)</sup> which addresses the questions of:

- completing the notifications of contact points and administrative structures as soon as possible and keeping them up to date;
- investigating the use of online versions of the lists (with suitable security measures), and monitoring the use of the contact points for cooperation on enforcement;
- the establishment by the Member States of contact points for the public, especially small and medium-sized enterprises (in line with the Council Resolution of 10 October 1994 (19)), in order for the system of inter-administration contact points to yield its full benefits;
- the provision of further support measures for cooperation, including seminars and exchanges between enforcement officials, such as are currently provided under the Karolus and Matthaeus programmes.

(17) OJ No C 179, 1.7.1994, p. 1.

(18) COM (96) 20, 29.01.1996

(19) Council Resolution of 10 October 1994 on giving full scope to the dynamism and innovatory potential of small and medium-sized enterprises, including the craft sector and micro-enterprises, in a competitive economy, OJ No C 294, 22.10.1994 - last dash of section III, p.7.

33. The customs, indirect taxation and veterinary sectors have **programmes of exchanges between enforcement officials** in their areas (Matthaeus, Matthaeus-Tax and the veterinary exchange programme). The Karolus programme applies to other areas of internal market legislation, for which priorities are fixed in annual decisions.

Two successive reports were received on the programme from the European Institute for Public Administration in Maastricht, which holds a contract for administration of the programme. These reports indicated that considerable benefit had been gained by those taking part, among which the acquisition of contacts in the host administrations were particularly mentioned.

By December 1995, 193 exchanges had taken place since the programme began in 1993, the largest numbers being of officials concerned with supervising the award of public procurement contracts and with foodstuffs control. This was less than the number planned, and discussions were held in October 1995 with the Karolus Committee and other interested parties to see if the aims of the programme, which are to promote more even-handed enforcement, would be better served if the rules were changed. In particular, the use of Karolus funds for training activities such as seminars was discussed.

34. In the customs field, the Commission put forward a proposal in April 1995 for a Decision of the European Parliament and the Council on an action programme for Community customs (Customs 2000) (20). The objective of the proposal is to establish a framework for the development and modernisation of customs administrations over a five-year period. It would support the actions undertaken by the Member States to strengthen the essential cooperation between their customs administrations and between them and the Commission in order to ensure uniform application of Community law at every point on the external border. The Council's common position was adopted on 21 December 1995.

## **B Penalties for infringements of Community law**

35. By adopting, on 3 May 1995, a communication on the role of penalties in implementing Community internal market legislation (21), the Commission called on the Council and the European Parliament to support the work being undertaken with a view to improving the transparency and ensuring the effectiveness and efficiency of the penalties imposed in the event of infringement of the common rules

The Council responded very positively to that request by adopting, on 29 June 1995, a resolution on the effective uniform application of Community law and on the penalties applicable for breaches of Community law in the internal market (22).

In essence, the Commission communication highlighted the following: without excluding the possibility of proposing that common penalties be laid down where necessary, the Commission confirms that the principle of recourse to national systems of penalties should be retained. There was no apparent reason to suppose that national penalties imposed in respect of Community or national rules would not be effective and proportionate and act as a deterrent, since it was in each Member State's interest to ensure that the rule of law was properly upheld on its territory so that it did not lose the confidence either of its own citizens or of the general public elsewhere in the Union.

36. Nevertheless, given the - in some cases - significant differences noted by the Commission when examining the transposal and application of the common rules, particularly as regards public procurement, it stressed the importance of ensuring a degree of transparency in the national penalty systems, in order to confirm that they were effective, proportionate and a sufficient deterrent. To that end, the communication sets out the Commission's intention of

(20) COM (95) 119 final, OJ No C 301, 13.11.1995 as amended by COM (95) 451 final, OJ No C 327, 7.12.1995 as amended by COM (95) 576 final, not yet published.

(21) COM (95) 162 final of 30.5.1995.

(22) OJ No C 188, 22.7.1995, p. 1.

including in future proposals for regulations and directives a clause expressly requiring notification of the penalties to be applied in the event of a breach of the internal-market rules.

By means of the communication, the Commission called on the Council and Parliament to:

- take note of its initial guidelines on penalties in the internal market field;
- confirm the need for national systems of penalties in this area to be transparent;
- give a firm commitment to supporting work on penalties, particularly in respect of public procurement and customs legislation;
- undertake to discuss openly and constructively the sectoral proposals which the Commission will be bringing forward during the coming months in order to ensure that penalties for breaching the internal-market rules are effective and proportionate and have deterrent effect.

In its resolution of 29 June 1995, the Council responded favourably to the above requests.

37. The Commission services continued their work on penalties in the customs field, on the basis of the mandate which they had received, which covers the examination of the range, classification and degree of gravity of customs infringements, taking account of the provisions of the Community Customs Code.

### **§ 3 - Access to justice and judicial cooperation**

#### **A. Training and information provided for the legal professions in the field of Community law**

38. Within the framework of the Strategic Programme "Making the Most of the Internal Market" (23), the Commission organised in March and October 1995 two meetings of experts (judges, lawyers and academics from every Member State) to discuss possible initiatives to be launched in order to improve the training and information of all legal practitioners in order to improve the application of Community law within national jurisdictions.

As a direct result of these meetings, the Commission is now preparing a new targeted action plan called the "Robert SCHUMAN Action", which will encourage the teaching of Community law in the educational establishments which have responsibility for the initial or continuing education of judges, magistrates or lawyers. The Action will also seek to develop all means of information in Community law in the places where legal practitioners carry out their duties (Courts, Bars, vocational schools etc.).

#### **B. Access to justice for consumers**

39. As regards access of consumers to justice and the settlement of consumer disputes in the Single Market, the Commission developed a balanced approach as a follow-up to the Green Paper published on 16 November 1993 (24).

40. The envisaged initiatives mainly focus on self-regulation and cross-border cooperation, accompanied by possible legislation on some specific problems of infringement of Community law.

---

(23) COM (93) 632 final of 22.12.93.

(24) COM (93) 576 final of 16.11.1993.

These initiatives aim to simplify the settlement of cross-border individual disputes by promoting the creation of out-of-court procedures and better cooperation between the existing relevant bodies.

41. Some legally binding measures may also be envisaged in order to ensure that swift and effective remedies exist, throughout the European Union, against certain unlawful cross-border practices which are detrimental to the interests of consumers as well as to the proper functioning of the Single Market.

### **C. Free movement of judgements**

42. Further progress has been made towards the adoption of two conventions dealing with jurisdiction, recognition and enforcement of judgements relating to bankruptcy and divorce, annulment and legal separation. These two areas were excluded from the scope of the 1968 Brussels Convention. The Bankruptcy Convention was initialed by all the Member States on 25 September 1995 and signed by twelve of them on 23 November. The remaining Member States, Ireland, the Netherlands and the United Kingdom, are due to sign by 23 May 1996. As regards family law, working groups have continued to work on the draft text of a convention.

43. Negotiations started on the text of a convention on the simplification of the transmission of legal documents. The aim of the convention is to provide for the direct transmission of legal documents between Member States.

## **§ 4 - Evaluation of the effectiveness of the legislation**

44. As requested by the Council in 1992 and as foreseen in the Strategic Programme for the Internal Market of 1993, the Commission is carrying out a major evaluation of the impact and effectiveness of single market legislation. Over 40 independent studies got under way during 1995 and these will form the basis for a report in 1996. This analysis will permit the Commission to orientate its single market strategy in the last years of the century and to fine-tune the legislative framework. It will include:

- a business survey of 12,000 EU companies
- a business survey among representatives of European associations of manufacturing industry and service sectors
- a series of studies into trade barriers (technical barriers, public procurement, customs and fiscal formalities, industrial property protection)
- studies into trade and investment (foreign direct investment flows, intra and inter-industry flows, competitiveness/trade creation and diversion, external market access)
- studies of competition and economies of scale effects (pan-European markets, competition in the internal market, economies of scale, intangible investments)
- studies into the effects of regional policy, social and labour policy, capital market liberalisation, multi-currency management and macro-economic modelling
- sectoral studies (food, drink & tobacco, pharmaceuticals, textiles & clothing, construction site equipment, chemicals, motor vehicles, processed foodstuffs, telecoms equipment, insurance, banking, air transport, distribution, road freight, liberalised telecoms services, advertising, audiovisual services, information services, energy and the cost of inadequate transport infrastructure).

The results of the survey are expected to be published in the last quarter of 1996.

## § 5 - Statistics

45. The need for reliable statistics on the Single Market is influencing the statistical work of Eurostat, both in the short and long term.

46. The short term objective relates to the need to provide unbiased and reliable data for the 1996 review. Quantitative as well as qualitative data either from Eurostat directly or from the Member States was prepared for the "1996 study" between January and October 1995, collected from existing databases at Eurostat and in the Member States and from a longitudinal study at enterprise survey in the pre-95 Member States.

47. The long term goal is to improve current data collection. This concerns above all in a series of service industries, where more detailed information would help administrations and economic agents to assess the development and to make efficient use of the Single Market.

## § 6- Regulatory policy and simplification

### A. Regulatory policy and simplification of legislation

48. Throughout 1995, increasing interest was evident on the part of the Member States and the Community institutions in ensuring better and simpler regulation, both in the preparation of new regulation and in evaluating the appropriateness of existing legislation.

49. The Commission prepared General Guidelines on Regulatory Policy (25) which have been issued to all Commission services. They emphasise the need for adequate consultation, impact evaluation, ensuring coherence between different Community policy objectives and consideration of the proposal in the light of the principles of subsidiarity and proportionality.

50. The report of the Group on Legislative and Administrative Simplification (26), chaired by Mr. Bernhard Molitor, made many specific recommendations on possible simplification of Community legislation. In its comments on the report, published in November (27), the Commission broadly welcomed the general recommendations of the report, which favoured an approach to new legislation similar to that which is now set out in the General Guidelines, insisted on the need for timely and correct transposal of Directives by Member States and advocated greater efforts towards the consolidation of Community law. However, the Commission indicated that it would have welcomed more commitment from the Group in analysing and assessing the impact of national legislation. The UNICE Regulatory Report (28), prepared with financial assistance from the Commission, confirmed that much of the regulatory burden on business is the responsibility of Member States rather than of the Community.

51. The Commission's report to the European Council, "Better Law-making" (29) deals with developments in 1995 and priorities for 1996 with regard to the application of the principles of subsidiarity and proportionality, simplification and consolidation. The Committee on Improving and Simplifying the Business Environment will also be involved in following up some of the recommendations of the Molitor Report, where they impinge on small and medium sized enterprises.

---

(25) SEC (95) 2255, 17.01.1996.

(26) COM(95) 288 final/2, 21.06.1995.

(27) SEC(95) 2121, 29.11.1995.

(28) "Releasing Europe's Potential through targeted Regulatory Reform" - Brussels, 1995.

(29) Doc. No CSE (95) 580.

## B. Legislative and declaratory consolidation

52. Technical advances and a new accelerated working method, which was adopted in the Interinstitutional agreement of 20 December 1994, are contributing to progress in the area of legislative and declaratory consolidation. Some 10 proposals for formal consolidation were adopted by the Commission in 1995, including areas such as telecommunications, animal health, animal feedingstuffs and seeds and plants. Work is well advanced on further proposals, including those on banking, life- and non-life insurance and stock-exchanges and securities, which will be presented in 1996.

53. Intensified work on informal consolidation has resulted in the consolidation of some 140 sets of legislation, combining nearly 1500 original instruments. These texts will be available through the Publications Office and its distribution network early in 1996.

## § 7- Communication and information policy

54. The effective operation of the single market requires adequate flows of information between the Community institutions, Member States and participants in the single market. In 1995, the Commission undertook a number of actions designed both to promote awareness of single market opportunities among individuals and enterprises and to inform itself of their views and experiences.

55. Following the success of the internal market weeks organised in the then twelve Member States in 1994, similar events were held in the three new Member States in 1995. These events provided opportunities for Commission officials, representatives of national administrations and single market participants to exchange views on the situation with regard to the single market in each of the countries concerned.

56. The Commission continued to publish a number of periodicals relevant to the single market, including *DG XV News*, now redesigned with a wider circulation under the title *Single Market News*.

57. Another survey of the experiences of SMEs (30) in the single market was carried out with the aid of the Euro-Info Centre Network.

58. The Commission increasingly explored the potential of electronic media. It produced a first CD-ROM (31) on the Internal Market based on the 350 Questions and Answers on the Internal Market contained in the Database *Info 92*. The possibility of a more comprehensive CD-ROM publication is being examined. As a first step towards making single market information available on the Internet, the Commission created a window on this topic on the Europa server (32).

59. In his speech before the European Parliament in January 1995, President Santer put forward the idea of an initiative designed to demonstrate the advantages and opportunities of the single market - the key achievement of Community integration to date - for individual citizens: hence the title of the initiative, "*Citizens First!*".

Substantial preparatory work was carried out in 1995 with a view to launching the exercise next year. Several guides will be produced to help individuals towards an awareness of their single market rights, the means of exercising them in each Member State and the avenues for obtaining redress if they are denied.

---

(30) May be obtained on request from DG XV.

(31) "The Internal Market - Everybody's business!". This may be obtained on request from DG XV, unit A1.

(32) WWW address: <http://www.cec.lu/>.

## Section 3 - Free movement of persons

### § 1 - Abolition of controls at internal frontiers

60. There still remain gaps in the complete implementation of an essential objective of the Treaty, the free movement of people. However, the Commission has for its part, decided to submit to the Council and the European Parliament the last proposals that complete those which are already on the Council table. If these gaps are not closed, they could damage the political credibility of the European Union.

61. While many problems remain regarding border controls on individuals, the Commission has noted some advances under the Schengen agreements. Seven of the Member States of the Union (Germany, Belgium, Spain, France, Luxembourg, the Netherlands and Portugal), have applied between them, in an irreversible way, from 1 July 1995, the Schengen Convention aimed at the abolition of all controls on people crossing their common borders (33). The implementation of the Convention represents an important stage in the completion of the objective of article 7A\* of the EC Treaty.

62. In parallel, the Commission adopted, on 12 July 1995, three proposals for Directives aiming at the abolition of controls on people on crossing internal borders throughout the European Union as a whole. In the opinion of the Commission, the internal market must function under the same conditions as a national market, where intra-Community journeys should be undertaken just like journeys between regions or provinces of a Member State. But until the internal frontier controls are abolished, the internal market will not be a reality for Community citizens. Of course, the abolition of the internal frontier controls should in no way involve a reduction in the safety of the European citizen. On the contrary, it is specifically provided for in the proposals that the abolition of the controls will not enter into force unless the essential supporting measures to ensure the maintenance of a high safety level in the area without frontiers is definitively adopted and satisfactorily implemented. All these measures are on the Council table.

The first of the new proposals gives concrete expression to the abolition of controls, and clarifies the scope of the prohibition on carrying out controls and on imposing formalities at internal borders (34). This proposal confirms that all persons, whatever their nationality, are the beneficiaries of the abolition of internal frontier controls. A "safeguard clause" is envisaged for when a Member State is confronted with a sufficiently serious material threat to public order or safety.

A second proposal for a directive aims to modify secondary legislation in the field of free movement of people so as to eliminate from these texts any provision making it possible to carry out controls on persons at the time of crossing an internal border (35).

Lastly, a third proposal aims to grant to nationals of third countries, who are legally in a Member State, the right to make a short visit to the territory of the other Member States if they are equipped with a residence permit or a visa valid for all the Member States of the Union (36). This is also an inseparable supplement to the proposals that the Commission submitted in

(33) However, France has applied the safeguard clause allowing the temporary reinstatement of border controls for reasons of public order and national security.

(34) COM (95) 346 final, OJ No C 306, 17.11.1995.

(35) COM (95) 347 final, OJ No C 289, 31.10.1995.

(36) COM (95) 348 final, OJ No C 307, 18.11.1995.



December 1993 as regards crossing external borders (37), by envisaging equivalence between a residence permit and a visa delivered by a Member State, as well as the mutual recognition of visas. By this measure, several million foreign residents will be able to go to different countries of the Union without being forced to equip themselves with a visa beforehand, which will encourage tourism and cross border acquisition of goods and services.

63. The Council adopted this year two regulations, that of 29 May 1995 establishing a model type of visa (Regulation (EC) 1683/95\*), and that of 25 September 1995 determining the list of third countries whose nationals must have a visa to enter Community territory (Regulation (EC) 2317/95\*).

## **§ 2 - Free movement of persons in the Community**

### **A. Right of residence**

64. Letters of formal notice were sent to 9 Member States regarding their incorrect transposition of some or all of the three directives on rights of residence.

### **B. Recognition of qualifications**

65. Between 1991 and the end of 1994 nearly 10,000 European citizens obtained recognition of their diplomas under Directive 89/48/EEC\* and a further 5,000 or so each year take advantage of the sectoral directives (for doctors, dentists, veterinary surgeons, nurses responsible for general care, midwives, pharmacists and architects).

66. However, 1995 witnessed a marked increase in the number of complaints registered by the Commission from migrants who had encountered difficulties in obtaining recognition of their diplomas. It is impossible to judge whether this increase reflects a real deterioration by comparison with previous years or whether it is caused by a greater awareness on the part of would-be migrants of their rights under Community law.

The majority of the complaints concern the general system for the recognition of diplomas and professional qualification established by Council Directives 89/48/EEC\* and 92/51/EEC\*. In some cases difficulties can be attributed to the absence of implementing legislation, particularly in relation to the latter directive which should have been transposed by 18 June 1994 but which is only fully operational in seven Member States. As regards Directive 89/48/EEC\*, one Member State, namely Belgium, has, nearly five years after the deadline for implementation, still to take any effective measures in national law. Other problems stem from difficulties encountered in interpreting the basic concepts contained in the directives (such as "diploma", "higher education", "regulated profession") and the application of the recognition mechanism itself.

67. To remedy this situation the Commission will seek to ensure that those responsible for applying the directives arrive at a better understanding of them and that those who seek to rely on the general system are made fully aware of their rights.

68. In order to make Community legislation clearer and simpler, the Commission will shortly present a proposal for a directive aimed at consolidating the main provisions of 35 existing directives concerning professional activities and creating a recognition mechanism for diplomas relating to those activities not covered by other directives.

---

(37) COM (93) 684 final, OJ No C 11, 15.1.1994.

### **C. Employment services in cross-border regions**

69. 1995 was the first full year of operation of the EURES network, which was launched in November 1994 with the objective of facilitating the free movement of workers within the European Economic Area. EURES is a partnership made up of the Commission, public employment services and representatives of the social partners in cross-border regions. During the year, it has facilitated the exchange of experience and good practice between network members. Cooperation between public employment services is already beginning to go beyond what was foreseen at the outset.

---

## **Section 4 - Free movement of goods**

### **Instruments provided for by Community law for ensuring free movement of goods**

#### **§ 1 - Articles 30 to 36\* of the EC Treaty**

##### **A. Introduction**

70. Articles 30 et seq.\* of the EC Treaty prohibit quantitative restrictions on imports and exports, as well as measures which have an equivalent effect. Actions undertaken by the Commission to check Member States' adherence to these articles aim to eliminate obstacles to trade, in particular by a dialogue with the Member States.

71. In 1995 the Commission recorded 258 new cases, which were either detected in the course of the Commission's work, or resulted from complaints by economic operators or professional associations. The increase in comparison to 1994 can be explained mainly by the accession of Finland, Austria and Sweden.

During the same period, 238 files were terminated. It should also be noted that only two were the subject of a referral to the Court of Justice, confirming that the partnership advocated by the Commission with the aim of finding non-contentious solutions to cases submitted to it has proved profitable. This year, meetings were organised in Spain, in France, in Italy, in the Netherlands, Germany, Greece and for the first time, in Belgium. This exercise will be extended to the new Member States, Austria, Finland and Sweden. These "package meetings" give the framework necessary for a detailed dialogue between the Commission and Member State departments, and made it possible to find a solution for 60 files.

##### **B. The main fields in which the Commission acted to eliminate obstacles to trade in 1995**

72. As can be seen from the statistics appearing in the table III extracted from the 258 new files registered, the main areas in which government measures are likely to have the objective or the effect of restricting intra-Community trade are those of road vehicles, food, chemicals, and pharmaceutical and medical products.

As in 1994, the most numerous difficulties were noted in the food and road vehicles sectors.

TABLE III - COMPLAINTS CONCERNING OBSTACLES TO TRADE RECORDED IN 1995 (ARTICLES 30 ET SEQ.)

Member State	Road vehicles	Foodstuffs	Chemicals	Pharmaceutical & medical products	Telecommunications	Construction	Other	TOTAL
B	6	6	1	1	0	1	2	17
DK	2	0	1	1	0	0	1	5
D	4	21	4	0	2	2	21	54
EL	2	3	1	2	1	0	0	9
E	4	7	1	1	0	0	13	26
F	23	10	1	0	1	0	13	48
IRL	0	0	0	0	0	0	0	0
I	10	5	1	3	3	0	10	32
L	3	0	0	0	0	0	0	3
NL	1	3	0	0	2	0	9	15
O	1	1	2	1	0	2	3	10
P	2	1	0	0	0	0	2	5
FIN	2	1	0	0	0	1	1	5
S	7	8	3	0	0	0	1	19
UK	4	0	0	1	0	0	5	10
TOTAL	71	66	15	10	9	6	81	258

73. All the Member States, except for Ireland, are involved. It is significant in this respect that the situation of the new Member States, Austria, Finland and Sweden, reflects the general situation found in the other Member States. Indeed, the majority of the complaints concerning these three countries concern regulations relating to the registration of the vehicles, the marketing of food and the marketing of pharmaceutical products. The nature of the obstacles encountered by economic operators and the objectives pursued by the Member States vary from one sector to another, but are not markedly different from the obstacles which the Commission identified in previous reports.

#### a) Road Vehicles

74. It is in the road vehicle sector that the Commission recorded most cases this year. These difficulties, which mainly concern vehicles which have previously been registered in another Member State, as in 1994, originate primarily in the non-application of the principle of mutual recognition by vehicle inspectors and national technical standards, as well as the non-recognition of documents delivered in another Member State, despite their containing the necessary information. The Commission is therefore paying particular attention to this situation, which in many cases challenges a right that the Internal Market grants to the Community citizen. Examples of the results obtained following the intervention of the Commission are the greater flexibility introduced by France on registration procedures for second-hand vehicles, and by Spain on its regulation on individual approval of right hand drive cars.

In order to make the national authorities aware of their obligations regarding the registration of vehicles and to inform the general public of the rights and guarantees they enjoy under Community law, the Commission adopted on 20 December 1995 an interpretative notice regarding the procedures for the type approval and registration of vehicles previously registered in another Member State (38). The main aim of the new notice adopted by the Commission is to explain the principles and procedures which national authorities should follow so that motor vehicles previously registered in a different Member State can be registered simply and efficiently in their countries. The notice provides a clear account of the practical consequences for national authorities and private individuals flowing from both the introduction of EC type approval for vehicles and the Court's decisions.

(38) SEC(95) 2262, not yet published.

**b) Food**

75. The Commission noted that in 1995, as in 1994, the principle obstacles lie in national procedures requiring prior authorisation aimed at checking the composition of food, and particularly the presence of food supplements (nutrients, vitamins) and/or additives. In this respect, and in order to be in a position to better guarantee compliance with Community rules on the matter, the Commission asked the authorities of the Member States to provide it with details on the national procedures currently in force.

The Commission stressed that the imperative requirement of consumer protection does not involve the banning of products on the grounds of national "quality". Thus, for example, following the intervention of the Commission, Greek authorities amended the regulation in force in order to make possible the marketing of certain drinks containing a low fruit juice content, as long as their labelling specifies this content.

**c) Chemical products**

76. Some of the obstacles about which the 15 complaints were received derive from prohibitions on the importation or use of products which the Member States consider as posing a risk for public health and for consumers. But most are related to the authorisation procedures for marketing and, in the case of parallel imports, to the procedures for verifying that the imported product is identical with the products the marketing of which has already been authorised.

**d) Pharmaceutical and medical products**

77. The barriers to the free movement of pharmaceutical products mainly have to do with the procedures for authorisation of the marketing and difficulties related to parallel imports. The Commission has intervened on many occasions to facilitate the parallel importation of products manufactured in another Member State and already marketed, or of medicines with therapeutic characteristics identical to medicines existing on the market (39).

**e) Other types of obstacle**

78. The Commission noted in 1995 as regards commercial regulation an upsurge in regulations necessitating the use of the national language for certain information found on the labelling of products. Thus, for example, the Commission stated that the obligation to ensure that bottles carry the indication "no deposit" in Dutch as well as a logo indicating a separate collection of these bottles was a disproportionate, excessive obligation in comparison to what the consumer needed to know.

79. The Commission also had to examine certain regulations relating to the marking of place of origin leading to barriers to trade. For example, following a complaint against the requirement by Danish legislation for clothing imported and sold under the name of a Danish company or under a Danish mark to carry labelling mentioning that they were imported or their country of origin, the Commission concluded these requirements as regards labelling for imported clothing were equivalent to a restriction on trade between Member States, contrary to the rules of the EC treaty (Article 30\*).

---

(39) Communication on parallel imports in the pharmaceutical specialities sector, OJ No C 115, 6.5.1982.

### C. Action by the Court of Justice

80. The jurisprudence of the Court of Justice is an important instrument for the uniform and effective application of the Community rules in the area of Article 30 et seq.\* of the EC Treaty, as the concept of "measures having an equivalent effect to a quantitative restriction" is not defined by the Treaty.

81. The following were among the main judgements of the Court of Justice in 1995:

- Television advertising for goods on behalf of the distribution sector (40)  
Article 30\* of the Treaty does not apply to a case where a Member State prohibits by legislative or regulatory means the dissemination of advertising messages on behalf of the distribution sector of the economy. Such a measure is not intended to regulate the exchange of goods between the Member States but concerns methods of sale, and applies to all economic operators without distinguishing between products and does not affect the sale of products coming from other Member States differently from that of home products.
- Setting of maximum levels for pesticide residues (41)  
Directive 90/642/EEC\* of the Council, of 27 November 1990, regarding the setting of maximum levels for pesticide residues on and in certain products of plant origin, does not prevent national regulations from setting the maximum levels authorised for residues of chlorpropham and propham and the methods for monitoring compliance with these levels. The Court nevertheless made it clear that such a regulations should respect the provisions of Articles 30 and 36\* of the Treaty.
- Importation of a drug (diamorphine) (42)  
A prohibition on importation could not be allowed on the basis of Article 36\* if justified on the grounds of the need to ensure the survival of a business. On the other hand it can benefit from the derogation provided for in Article 36\* when the protection of the health and life of people is in question and this objective cannot be achieved as effectively by measures less restrictive of intra-Community trade.
- Presentation of a product which might limit the freedom to set resale prices and mislead the consumer (43)  
A prohibition on the putting into circulation in a Member State of products carrying the same advertising references as are used in other Member States is of a kind that hinders intra-Community trade because it may force the importer to adapt the presentation of the products in a different way depending on the place in which they are offered for sale and to incur additional packaging and advertising costs.

(40) Case C-412/93; judgement delivered on 9 February 1995.

(41) Joined cases C-54/94 and C-74/94; judgement delivered on 23 February 1995.

(42) Case C-324/93; judgement delivered on 23 March 1995.

(43) Case C-470/93; judgement delivered on 6 July 1995 (not yet published).

## § 2 - Technical harmonization and standardization

### A. Adoption and implementation of legislation in the various sectors

#### a) *Agricultural products*

##### Veterinary and zootechnical legislation

82. Important decisions were taken during 1995 in the area of veterinary and zootechnical legislation. These include Directive 95/29/EC\* on the protection of animals during transport, three decisions on salmonella tests for certain animals and animal products destined for Finland and Sweden (Decisions 95/409/EC\*, 95/410/EC\* and 95/411/EC\*) and modifying directives on trade in fresh meat and on trade in cattle and pigs (Directives 95/23/EC\* and 95/25/EC\*).

83. The Commission also submitted proposals to the Council on a number of matters, including meat-based products and protective measures against certain zoonoses.

84. The Commission adopted several implementation measures regarding the measures adopted to complete the single market. It also adopted decisions to harmonise the conditions for the importation of fish products and live bivalve molluscs (Council Directive 95/22/CE\*), the provision of Community financing for the eradication of animal diseases and restraining the development of such diseases, with particular regard to classic swine fever in Germany and foot-and-mouth disease in Greece (44). Safeguard clauses were implemented to avoid the introduction of disease into the Community, particularly on the appearance of foot-and-mouth disease in Russia and of dourine in Mexico.

85. The Commission organised a major conference in Brussels at the beginning of December, in order to review the scientific evidence and evaluate the present state of knowledge on the use of growth activators in meat production.

##### Plant health and other legislation relating to crop products and animal nutrition

86. These are areas which have been subject to harmonised legislation for many years and where there is a high level of administrative cooperation between the Member States and the Commission. There have been no serious problems in 1995.

- *Plant health* - Certain "protected zones" were recognised under Commission Directive 95/40/EC\* as being exposed to particular plant health risks and accorded special protection, while Commission Directive 95/44/EC\* detailed derogation provisions from the Community plant health regime for trials, scientific and varietal selection work. Consolidation of Council directive 77/93/EEC\* is due to be completed in 1996.
- *Seeds and Propagating Material* - The Council has not yet adopted the proposal to update the 7 basic seeds directives (45) to ensure total compatibility with the internal market and the opinion of the European Parliament is still awaited. It is unlikely the proposal will be adopted before mid 1996. Consolidation of these 7 basic directives is also due to be completed in 1996.
- *Pesticide residues* - The Council adopted two new directives (Directives 95/38/EC\* and 95/61/EC\*) which provide for the fixing of maximum pesticide residue levels in a wide range of agricultural products for seven additional pesticides not previously covered by Community legislation.

---

(44) Not yet published.

(45) COM (93) 598 final, published in OJ C 39, 31/1/94.

### Plant variety rights

87. The Community Plant Variety Rights Office began functioning at a provisional address in Brussels, in the absence of agreement on a permanent site. The Commission adopted three implementing measures relating to plant variety rights under the basic Regulation (EC) No. 2100/94\* (46).

### Complaints

88. The main obstacles to free movement of agricultural products reported to the Commission in 1994 were technical barriers, such as the Italian authorities' new maximum limits on pesticide residues in lemons, or their stepping-up of point-of-arrival checks for salmonella in fresh meat from other Member States.

The problems in trade reported to the Commission were in areas in which the Community rules are not yet complete or the harmonizing directive has not yet come into effect.

### **b) Capital goods**

89. In the field of capital goods, the Commission has pursued its activities on the establishment and application of the regulatory framework covering the various sectors. The transposition period for 92 directives in such sectors as mechanical and electrical engineering, personal protection equipment, gas, pressure vessels, prepackaging, legal metrology, and medical devices will have expired before 31 December 1995. Among these, the directives of the "new approach" type are of a special importance, from both a legal and a economic point of view. The transposition rate is good, in view of the objective complexity of the transposition of the directives in this field. In view of the pre-existence in the Member States of detailed legislation on the matters covered by the directives, often in connection with other objectives (e.g. installation rules, social security), the insertion of the principles of the "new Approach" in the national systems can prove complex, requiring interaction between the Community provisions and the national systems.

### **c) Foodstuffs**

90. In the foodstuffs sector, the adoption by the European Parliament and the Council on 20 January 1995 of Directive 95/2/EC\* on additives other than colorants and sweeteners completes the harmonisation of the basic rules on food additives within the Community. The implementation of the new rules will make a major contribution to the operation of the internal market in this sector. In addition, the Commission adopted two directives establishing the criteria of purity for colorants (Directive 95/45/EC\*) and sweeteners (Directive 95/31/EC\*) respectively. Further substantial progress was made with the adoption by the Council of 4 common positions on the labelling of foodstuffs, novel foods, flavours and natural mineral waters respectively. The Commission forwarded three new proposals to the Council relating to additives, two of which provide for the technical updating of the existing regulation, while the third establishes the list of traditional foods in which Member States may restrict the use of authorised additives (47). In addition, the services of the Commission undertook the first control missions to Member States in the framework of Directive 93/99/EEC\* on additional measures for the official control of foodstuffs, while there was an increase in the range of tasks subject to scientific cooperation between the Commission and Member States.

(46) Three implementing measures published in OJ Nos L 121, 1.6.1995, pp. 31 and 37, and L 173, 25.7.1995, p. 14.

(47) COM (95) 126 final, OJ No C 134, 1.6.1995.



**d) *Pharmaceutical products***

91. There were significant developments in the pharmaceutical products sector in 1995. The new Community system for the authorization of medicines for human use and veterinary use came into effect on 1 January 1995. This system sets up two new procedures, a centralized procedure, at the end of which a marketing authorization valid for all the territory of the Community is issued, and a decentralized procedure, based on the principle of the mutual recognition, with Community arbitration in the event of disagreement. The requests for centralized authorization and for arbitration are examined by the European Agency for the Evaluation of Medicines, which opened at the beginning of 1995, and decided on by the Commission at the end of a comitology procedure. So far, three Community marketing authorisations have been granted for highly innovative pharmaceutical products.

**e) *Chemicals***

92. The internal market for chemicals works relatively well. The marketing and use of dangerous substances is, however, the principal sector where Member States request derogations under article 100 A § 4\* of the EC treaty in order to apply stricter internal measures for environmental protection and health reasons. In 1995 the Commission received requests from the Netherlands, Germany and Denmark regarding creosote, which is subject of directive 94/60/EC\* (14th amendment of directive 76/769/EEC\* on the limitations of the marketing and use of dangerous substances).

**f) *Motor vehicles***

93. The internal market in the motor vehicles sector is based on a number of Directives designed to replace the national technical regulations concerning the construction and operation of motor vehicles. This Community technical harmonization, based on safety and environmental considerations, consists of a series of individual directives covering the various components and entities of a vehicle and a framework directive organizing the overall type-approval procedure (Directive 70/156/EEC\*), which is destined to substitute for all national procedures. The application of this system enables a vehicle validly provided with a Community type-approval certificate to be sold and registered in any Member State, without no further formalities of a technical nature. This system, which has until now been optional for manufacturers, will become obligatory as regards personal vehicles from 1 January 1996. The same will apply to other categories of vehicles as from the adoption of the last individual directives concerning them.

94. It should be noted that this system is intended not only to facilitate the marketing and registration of new vehicles, but also generally to facilitate the free movement of vehicles within the Union. Any vehicle which has received type-approval and has been registered in one Member State should be able to obtain type-approval and registration in another Member State automatically on the basis of its Community type-approval certificate.

95. Besides progress with regard to technical harmonization, it is clear that the operation of the internal market for motor vehicles requires further action particularly with regard to the tax aspects, which may cause significant disturbances in the normal operation of the internal market. The Commission is currently examining the possibility of moving towards the beginning of harmonization with regard to registration and road taxes.

## **B. Special free movement arrangements**

### **a) Dual-use goods**

96. The integrated system of export controls on dual-use goods (Council Regulation No. (EC) 3381/94\*), adopted by the Council on 19 December 1994, became applicable on 1 July 1995. The key element of the system is that, by harmonising the requirements and establishing a common licence procedure for exports from the Community, free movement is established for the vast majority of dual-use goods within the Community. Although a limited number of highly sensitive items will still be controlled when transferred inside the Community, this will be done without the use of border controls. Article 5 still leaves room for national action. Thus, the principle of free movement in the Community is established in a sector which had previously remained an exception to the rules of the single market, although a good deal of work remains to be done to complete and finalize these rules.

### **b) Agricultural products**

97. The proposals for new common organisations of the market for potatoes (48) as well as the proposal to include certain agricultural products of lesser importance (honey, chicory, pine-apples, coffee, non-wine vinegar, cork) within the scope of Council Regulation (EEC) No. 827/68\* on the common organisation of the market in certain products listed in Annex II to the Treaty (49) ("catch-all" regulation) are still being deliberated upon at the Council.

## **C. Standardization policy**

98. The Commission has prepared a report (50) on the progress of European standardization, as announced at the meeting of the Industry Council in November 1995. This has revealed some interesting data, and confirms the impression that in the areas of the New Approach and public procurement, significant progress has been achieved, though much remains to be done.

99. In both these areas mandates continue to be issued for new work, though to some extent in these areas European standardization has entered upon a period of consolidation. It may be observed that with the development of the internal market, European standardization has begun to reach a critical mass in relation to national and international standardization. While significant progress has been made in efficiency, and output is impressive, it remains true that delivery of standards is still too slow and further improvement is needed.

100. The Commission is undertaking a review of policy in European standardization. Of particular importance is the area of information technology and telecommunications in which a major review of activity is already underway following the issue of the Bangemann Report on the Global Information society and the outcome of the conference in Genval, Belgium, in November 1994. As the economy in this sector is integrated at world level, both the Commission and the industry recognise that international standards must have priority.

---

(48) COM (92) 185 final, OJ No C 333, 17.12.1992.

(49) COM (91) 328 final, OJ No C 263, 9.10.1991, p.5.

(50) SEC (95) 2104 of 28.11.95.

## D. Quality, certification, and conformity marking policy

101. The Commission is pursuing its work on the implementation of its policy of quality; the Commission departments gathered the elements for the preparation of a Communication to the Council and the European Parliament on a European Policy on the Promotion of Quality. The Industry Council of 6 November confirmed its interest in this initiative.

1995 saw the entry into force of the directive on the EC mark (Council Directive 93/68/EC\*): since 1 January Member States have been required to accept on their territory any product conforming to the new harmonized rules.

102. Work on the consolidation of the internal system, i.e. coordination of notified bodies, organisation of an accreditation system through EOTC, has been accompanied by the opening of negotiations aimed at reaching agreements on mutual recognition with six other countries (USA, Canada, Australia, New Zealand, Japan, Switzerland). Under such agreements, tests and certificates of conformity issued by recognised bodies in those countries with regard to the requirements of Community directives will be recognised in the Community. Similarly, conformity assessment carried out by Community bodies with regard to third country requirements will be recognised by the country concerned. These arrangements will eliminate much of the duplication and delays associated with testing and certification of products being traded.

103. Quality policy for agricultural products and foodstuffs - The Commission studied the proposals of the Member States regarding European protection for geographical indications and designations of origin recognised by the Member States before the entry into force of this system of protection (Regulation (EC) No 2081/92\*) with the help of the ad-hoc Scientific Committee, and prepared the list of such indications and designations as a basis for the registration decision to be taken by the ad-hoc Regulatory Committee.

## § 3 - Prevention and control instruments

### A. Prevention of new obstacles - Procedure 83/189/EEC\*

104. The information procedure provided for by Directive 83/189/EEC\*, in particular with regard to the notification by the Member States of their draft technical legislation, continues to be a fundamental instrument for the prevention of obstacles to trade. Despite the completion of the internal market at the end of 1992, Member States continue to adopt a multiplicity of technical regulations concerning products.

Year	Notifications (51)	Observations		Reasoned opinions		Directive intended
		MS	COM	MS	COM	
1992	362	184	165	66	121	43
1993	385	134	139	75	137	10
1994	389	161	222	85	99	9
1995 (52)	438	102	114	60	57	6

The analysis of these national regulations raises questions regarding their effects on the single market. Indeed, they risk endangering the maintenance of this market and the integrity of the benefits it confers on economic operators.

(51) Data for 1992, 1993 and 1994 is for 12 Member States. If Austria, Finland and Sweden are included, the figures become 466 in 1992, 438 in 1993 and 442 in 1994. Data for 1995 is for the 15 Member States.

(52) The figures for reactions to the notifications cover those for which the deadline was 8 January; the last date for reaction on 95 Notifications being 31 March 96.

**105.** In the agricultural sector, 61 draft technical regulations were notified by Member States and by EFTA countries. The analyses of the draft legislation notified led the Commission to request in most cases that amendments be made to ensure that its adoption did not create new obstacles to the free movement of goods.

#### **B. Enforcement of the mutual recognition principle**

**106.** The proposal for a European Parliament and Council Decision establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community (Council Decision 95/3052/EC\*) was adopted by the Council at its Internal Market meeting on 23 November 1995.

In essence, the Decision provides for the implementation, from 1 January 1997, of a procedure whereby Member States have to notify the Commission of any measure preventing the free movement of a particular model or type of product lawfully produced or marketed in another Member State where the direct or indirect effect of the measure is a general ban on the goods, a refusal to allow the goods to be placed on the market, the modification of the model or type of product concerned, or its withdrawal from the market

This transparency will enable problems connected with the free movement of goods to be settled more quickly, either by adjusting the national rules, or - if necessary - by amending existing Community legislation.

On the basis of this notification, the cooperation established between the Member States, with the support of the Commission, will also help to ensure that Community action does not exceed what is necessary to attain the objective of free movement.

---

## **Section 5 - Freedom to provide services and right of establishment**

### **§ 1 - Services in general**

107. The rights, recognized by the EC Treaty, of freedom of establishment and the free movement of services within the European Union, as interpreted by the Court of Justice, may be asserted directly by economic operators. The many approaches, requests for information and above all complaints made directly to the European Commission are therefore a partial but significant pointer to the way in which the Internal Market is working in some areas.

108. In 1995, the Commission had to deal with a growing number of complaints from firms which, when supplying services in another Member State, had been faced with barriers concerning the secondment of staff who were third-country nationals, but whose employment was perfectly in order.

109. The fairs and exhibitions sector was the subject of a specific check concerning free movement of services and goods and right of establishment, the results of which will be the subject of a forthcoming interpretative Communication.

### **§ 2 - Financial services**

#### **A. Credit institutions**

##### **a) Derivatives**

110. Derivatives are financial contracts whose value depends on the value of one or more underlying assets, on a reference rate or on an index. Though used both for risk-hedging and speculation for over twenty years, recent events, such as the Barings Plc case, have focused attention on derivative products and markets.

The report of the Bank of England's Board of Banking Supervision on the Barings case (53) did not suggest additional regulation. However, in view of public interest and debate, Commissioner Monti sent communication to his colleagues on derivatives and capital movements which was published on 12 April 1995.

Existing Community legislation already covers many of the supervisory problems and concerns raised by derivatives. In particular, the Solvency Ratio Directive (Council Directive 89/647/EEC\*); which has been in force since 1991, and the Capital Adequacy Directive ("CAD") (Directive 93/6/EEC\*), which is to be implemented by 1 January 1996, require banks and investment firms to hold own funds against credit risks and market risks inherent in their derivatives activities.

---

(53) HMSO - published London 18.7.1995.

In addition, the CAD together with the Investment Services Directive (Directive 93/22/EC\*), which is also to be implemented by 1 January 1996, oblige institutions to have adequate risk monitoring systems in place.

111. However, legislation must keep pace with the development of markets. Therefore, responding to needs highlighted again in the European Parliament's report on financial derivatives of 22 September 1995, further legislative refinements of the supervisory treatment of derivatives are under way:

- the Council adopted a common position in September 1995 on a draft directive which would allow Member States to recognise so-called bilateral netting agreements (54), considerably reducing the credit risks of derivatives traded outside recognised exchanges ("over-the-counter derivatives");
- the Commission is preparing a draft directive which would extend the capital requirements for credit risks so as to cover all types of over-the-counter derivatives and prohibit the use of certain types of relatively high risk over-the-counter derivatives for institutions which do not have adequate risk controls in place;
- in consultation with the Member States, the Commission is also examining the national accounting standards for derivatives activities of financial institutions.

**b) *Interpretative communication on the interest of the general good***

112. In its contacts with economic operators, the Commission has noted that there are still differing interpretations and uncertainties as regards what constitutes provision of services and the scope of the general good clause in the Second Banking Directive (89/646/EEC\*). This is jeopardizing freedom to provide services in banking.

113. It has prepared a draft communication on these two points, which has been published for consultation in the Official Journal (55), in order to clarify the grey areas which remain.

- *Cross-border services* - In particular, the draft Communication defines the precise scope of Article 20 of the Directive, concerning the obligation on credit institutions wishing to provide cross-border services to notify to home Member State authorities the list of services they intend to offer for the first time in other Member States. It clarifies the difference between provision of services and establishment, and elaborates on a number of situations where it is difficult to distinguish between the two concepts. It then gives the Commission's views on the nature of the notification procedure laid down in Article 20 and on the legal implications of failing to comply with the procedure. Lastly, it clarifies the Commission's view that as soon as a credit institution has notified the home Member State authorities of its intention to provide services, it can commence operations by way of the freedom to provide services, without waiting for confirmation of receipt of the notification from the host Member State authorities.
- *General good* - The draft Communication analyses the concept of "general good" from two key perspectives. First, the Commission gives its opinion that the host Member State is not required to communicate its "general good" rules to a credit institution wishing to open a branch in its territory. Second, in the light of the case-law of the Court of Justice, the text analyses the applicability of Member States' rules adopted in the interest of the "general good" to Community credit institutions carrying on within their territory banking activities enjoying mutual recognition. On this point, the draft Communication notes that the principle of mutual recognition should be applied irrespective of whether credit institutions are operating by way of the freedom to provide services or through a branch.

(54) Common Position No. EC 21/95. Passed by Parliament 4th December 1995: PE decision No. A4 -0309.

(55) OJ No C 291, 4.11.1995.

In addition, the Communication describes the legal framework in which the host country's "general good" rules can still be applied against a Community credit institution.

## **B. Insurance services**

114. The Third Insurance Directives (Life 92/96/EEC\* and Non-Life 92/49/EEC\*) set out to achieve greater choice of products, lower prices for consumers, and more competition between insurance companies and insurance markets in Europe. The Single Market for insurance has now been operational for just over one year and these effects can already be observed in the marketplace.

For example, in Germany consumers are now benefiting from increased competition amongst insurers selling motor insurance. Price and product deregulation have led to a much wider choice of motor insurance, at a lower premium, than was available only less than a year ago.

Belgian customers are now buying capitalisation life insurance products marketed by French insurance companies. As Belgian insurers have always been restricted by law from selling these products, this type of life insurance has never been available for Belgian consumers. The single licence introduced by the Third Directives has changed this and has started to generate healthy competition between insurance markets in Europe.

115. In the field of insurance of large industrial and corporate risks, the single market came into being earlier (1.1.1990) and there is concrete evidence of increased competition. Risks that would have traditionally been underwritten by insurance companies from an enterprise's own Member State have been seen to be placed with foreign insurers, simply because those insurers offer better terms. In some markets insurance brokers are witnessing that because of increased competition between insurers clients are more assertive in negotiating contractual terms and premiums with insurance companies.

Where they see longer term opportunities in foreign markets, insurance companies are also gradually beginning to position themselves in other EU Member States too. A German company has acquired a health insurance company in the Netherlands. A British insurer has announced that it intends to sell motor insurance through direct telephone selling in Italy. These instances, unthinkable until only very recently, are evidence that change is slowly but gradually occurring in Europe's traditionally closed insurance markets.

116. These encouraging observations may be made notwithstanding the problems with transposition referred to in Section 2 above. Even in the case of the "third" directives, transposition of which has been achieved in all Member States except Greece, transposition is not always complete and satisfactory. The number of complaints addressed to the Commission as well as cases detected by the Commission has increased considerably in the field of insurance.

117. In October 1995, the Commission adopted a proposal for a Directive on the monitoring of insurance companies forming part of a group (56). The proposal aims to prevent double-counting of the own funds of an of insurance group, to establish a check on the transactions taking place inside the group and to improve the competent authorities access to information concerning insurance companies. The proposal stipulates that the provisions are to be transposed by 1 January 1997 and implemented as from 1 July 1997.

---

(56) COM (95) 406 final, OJ No C 343, 21.12.1995.

### C. Cross-border credit transfers

**118.** In December 1995 the Council reached a common position on the proposed directive on cross-border credit transfers (57). The directive establishes rules on transparency and performance of cross-border transfers, to remedy shortcomings which had resulted in calls for Community action from business and consumers. The Council decided that the directive should apply to cross-border credit transfers in the currencies of the Member States and the ECU for amounts lower than 25.000 ECU. Coverage would be extended to transfers lower than 30.000 ECU two years after the date set for implementation by Member States.

The directive will require an institution to provide its customers with written and easily comprehensible information indicating the time that will be taken to execute the transfer, the manner of calculation of rates and charges, an indication of the value date if any and information on redress procedures. Customers are also entitled to receive specified information following a transaction.

Institutions will have to execute a credit transfer within the time scale agreed with the customer. In the absence of such an agreement, funds are to be credited to the beneficiary's institution no later than 5 banking business days after acceptance of the order and made available to the beneficiary no later than the next banking business day. Interest is due to the customer for failure to execute the transfer on time. Charges not authorised by the originator of the transfer may not be made, and compensation is payable if they are. Where transfers fail to reach the beneficiary's bank, the originator is to be reimbursed up to 10.000 ECU, plus interest, charges and commissions.

Member States must also ensure that adequate and effective procedures exist to deal with customer complaints.

The directive should enter into force no later than 30 months after its definitive adoption, which the Commission hopes will be achieved by mid-1996, after the Second Reading by Parliament.

---

(57) Common Position reached 4.12.1995, contained in a Communication from the Commission to the Parliament: SEC (95) 1976 final.



---

## Section 6 - Free movement of capital

119. The monitoring by the Commission of the movement of capital and the freedom of payments within the Union has shown that the situation in this area is, in general, satisfactory. Community law has been transposed by Member States and transitional derogations have lapsed.

120. There remain, however, a number of impediments to the free movement of capital. Although they do not take, in most cases, the form of outright restrictions their impact on the effective capital mobility and financial integration may be important. Such impediments can take the form of conditions for the admission of foreign securities in the domestic capital markets not applied to domestic securities, provisions in privatization laws aimed to maintain control over privatised companies, constraints on investment abroad by institutional investors not justified by prudential rules, tax rules favouring investment in domestic financial instruments and restrictions on the physical transfer of funds. Procedures have been initiated by the Commission to eliminate such impediments. Such action has resulted in the improvement of the situation in some cases while in others the procedures are at an advanced stage.

121. The available data show that there has been in recent years a considerable increase in capital flows within the EU and vis-à-vis the rest of the world. There was, in particular, a sharp increase in direct and portfolio investment capital, a sign that investors, individuals and companies, are profiting from the opportunities offered by the free movement of capital and the Single Market. The growth of portfolio capital gives a measure of the integration of financial markets. It reflects also the increasing sophistication and attractiveness of national equity and bond markets, notably government bond markets. For example the share of government paper held by non-residents rose between 1987 and 1993 from 3 to 31% in France, from 21 to 34% in Germany from 36 to 51% in Denmark, from 9 to 16% in the Netherlands and from 2 to 4% in Italy. The need to tap the international markets had beneficial effects on the domestic financial markets: extensive reforms have been introduced and the liquidity, transparency and efficiency of the markets were improved.

122. The volatility of foreign exchange markets has focused attention on some of the less desirable effects of capital movements, often associated with trading in derivatives markets, and a debate has taken place, in several fora, about the appropriate policy response. Among the proposals advanced the most notable were i) the taxation of international capital flows and ii) the imposition of reserve requirements. The Commission had the opportunity to express its views on the above issue in public hearing at EP committees and in a Communication by the competent Commissioner. The Communication stated that the free movement of capital is guaranteed by the Treaty and, in consequence, any measures involving restrictions on the movement of capital not provided for in the Treaty are excluded. It also stated that sound economic and financial policies are the best way to limit destabilizing capital flows. Technical measures which fail to address the fundamental problems which lie at the origin of currency instability would be ineffective.

---

## Section 7 - Taxation

### § 1 - Indirect Taxation

123. The Commission's objective in this area (as in others) continues to be to consolidate the internal market in accordance with the rules of the Treaty by guaranteeing fiscal neutrality in commercial trade and thereby creating a genuine single market. Its assessment of three years of operation of the new indirect tax arrangements is positive insofar as the setting up and implementation of the new rules is concerned.

124. Nevertheless as regards Value Added Tax (VAT), experience has shown that traders are often not in a position to benefit from all the advantages that a single market has to offer because of the problems associated with implementing the requirements of the tax system - e.g. the need to distinguish between domestic and intra-Community sales, the problem of verifying the status of customers in other Member States, the difficulty of obtaining proof of transport to other Member States, the different declarations and formalities that must be completed for tax and statistical purposes, in every Member State in which the trader carries out a taxable transaction etc. These problems are often exacerbated by the different ways by which Member States authorities have chosen to transpose Community rules in national legislation particularly where Community law offers them the possibility of selecting from various options when implementing these rules.

125. In this connection, a survey of 182 companies in 15 Member States undertaken by the Euro Info Centres in 1995 revealed that 85% of the enterprises surveyed were satisfied with the working of the transitional VAT regime although some problems still need to be solved in order to increase their competitiveness. The main advantages cited by the respondents were money and time savings, easier and faster circulation of goods, better access to new markets. As for areas where the companies still have difficulties, INTRASTAT, fiscal representation, recuperation and reclaiming of VAT, getting approval of a VAT number and triangular transactions were mentioned.

126. However, the real difficulties underlying these problems stem from structural deficiencies in the nature of the VAT itself. The Commission has analysed these deficiencies and has concluded that they cannot be resolved within the framework of the principles of the present VAT system. The Commission has tried therefore to take account of these difficulties in its preparations for the introduction of the definitive VAT regime. It has concluded that any attempt to solve the underlying difficulties will require fundamental changes to the present VAT system as a whole so as to enable traders and business to treat domestic and intra-Community sales in the same way for VAT purposes while at the same time ensuring that Member States' VAT revenues continue to remain at their current levels.

As part of these preparations, the Commission adopted a proposal in December 1995 to fix the minimum and maximum levels of standard-rate VAT at 15% and 25% respectively for the period 1 January 1997 to 31 December 1998. This will not result in the need for any Member State to change its existing rates, but will ensure that the range will not grow wider, thereby facilitating the strict alignment of rates that will be needed under the definitive regime.

127. On the positive side, the abolition of frontier-related fiscal formalities within the Community has meant that Member States are making increasing use of the possibilities offered by Community arrangements for administrative cooperation and mutual assistance to help them to control VAT, including VAT on intra-community trade. Exchanges of information and other help

between the competent authorities of the Member States have become an integral part of Member States' VAT control strategy and have played a key role in ensuring the smooth application of VAT to commercial transactions within the internal market. The Commission and the Member States are continuing to work closely together in the Standing Committee on Administrative Cooperation to monitor and develop the effectiveness of these arrangements. The habit of working together has been assisted by the Community programme of training for indirect tax officials known as *Matthaeus Tax*.

**128.** In the area of excise duties, the Commission carried out the first biennial review of the minimum rates of duty which were introduced on 1 January 1993. The findings of this review were presented in a report to the Council and the European Parliament on 13 September 1995

The review considered the proper functioning of the Internal Market, the real value of the rates of duty and the wider objectives of the Treaty. It identified a number of potential problem areas, most notably - from an internal market viewpoint - in the cases of products subject to excise duty which compete with products which do not attract the duty. The Commission also noted that even comparatively minor adjustments within the system could have significant implications for other policy areas.

**129.** In addition to the problems identified in the report, it is clear that, at a more general level, there are differing views as to what the excise system introduced on 1 January 1993 represents - for some, it gives full effect to an Internal Market for excisable goods whereas others argue that it is simply a first step towards a market which more closely resembles a national market..

**130.** In the circumstances, the Commission chose not to make any proposals for change in its report; rather it was felt that wide-ranging consultation with national administrations, trade representative bodies, and other interest groups was necessary, prior to any legislative initiative. The purpose of this consultation would be to allow all parties to give all their views on the basis of having operated the Internal Market for over two years, and to react to the description of the situation as presented in the Commission report. In addition, it would assist in greater analysis of the interaction between excise duties and other policy areas, such as health, agriculture, environment, energy and transport.

During the last quarter of 1995, the Commission launched such a consultation process. As a focal point, it arranged a conference in Lisbon on 13, 14 and 15 November, which was attended by over three hundred representatives of national administrations, industry, consumer and other interest groups. The conference examined each product sector from the viewpoint of the functioning of the Internal Market, the role of excises as a source of revenue and the interaction with other policy areas in a series of workshops. As a follow up to the conference, and another key element of the consultation process, all interested parties were invited to make detailed written submissions.

The views expressed at the Lisbon Conference, as well as those put forward in submissions, will be taken into consideration by the Commission during its work on excise duties in 1996, and in particular in the preparation of the second review of excise duty rates which is due by 31 December 1996.

Already, as a result of the discussions in Lisbon, it has been decided to hold a special seminar early in 1996 for the mineral oil sector, which will bring together specialists from the trade and national administrations. This seminar will consider ways of improving the control and movement of mineral oils circulating in the Internal Market, and of reducing the potential for fraud.

## **§ 2 - Direct Taxation**

**131.** Diverging national tax rules are becoming an increasingly important obstacle to the smooth functioning of the single market, as other regulatory and economic barriers are progressively removed. Citizens, small and medium-sized enterprises and multinational companies are equally concerned by the continuing hindrances to the free movement of serv-

ices, labour and capital and the freedom of establishment which result from existing distortions. For example:

- non-residents are often discriminated against;
- the location of savings and investments is distorted;
- the cross-border provision of services is hampered;
- cross-border income flows suffer from double taxation and/or cash flow losses.

**132.** Very little progress was made in improving this situation in 1995. Commission proposals remain blocked in the Council as a result of the difficulty of reaching agreement under the unanimity voting principle. For example, discussions in the Council on the taxation of savings and the introduction of a common withholding tax among Member States have not yet resulted in agreement. The Commission continues to advocate a general withholding tax, at a low level, on non-residents within the Union as being technically the simplest solution and the one which is the easiest for other OECD partners to adopt. The only success at Council level was the signing in the Council of a Convention on the accession of Austria, Finland and Sweden to the Arbitration Convention, a Convention establishing binding arbitration in cases of transfer pricing disputes between Member States (58), at the end of December. The Accession Convention will enter into force, as between the States which have ratified it, after ratification by Austria, Finland and Sweden and one other Member State. It will enter into force for each State subsequently ratifying it.

**133.** Tax competition, for business activities or for capital, continues to pose a particular threat to the international tax system and to Member States' tax revenues. The Commission is committed to the consistent application of the Treaty competition rules in the tax area. An example of the seriousness with which the Commission views the dangers of fiscal degradation from special regimes is demonstrated by its decision of 12 April in the case of the Trieste scheme (59), on tax concessions for investments in Eastern Europe via Trieste. The Commission's approval of this scheme contains conditions in five key areas: a time limit of 5 years; the scheme will also be open to Italian residents; there will be a ceiling on the amount of loans or investments which can benefit from the advantageous tax treatment; there will be a ceiling on the amount of tax benefits given, defined as the difference between tax paid and the tax which would have been paid under normal Italian rules; and the Italian authorities will institute control procedures to ensure that funds are not directly or indirectly reinvested outside Eastern Europe. The last three conditions are all new elements in dealing with fiscal state aids.

**134.** Even in those areas where the Commission is seeking to promote common approaches through voluntary cooperation between national tax authorities, progress has been slow. Thus, for example, while there is agreement on the principle of the direct application of reduced rates of withholding tax on interest (60) (as opposed to a system of later reimbursement), the practical arrangements for implementing this principle have yet to be agreed, including a common approach to the certification of residence.

**135.** As the Council is not able to reach agreement on legislative measures, taxpayers are increasingly addressing the Court of Justice to find solutions for their cross-border tax problems. In 1995, the Court gave two important rulings on the taxation of cross-border workers, in February 1995 in the case of Schumacker (C-279/93) (61), and in August in the case of Wielockx (C-80/94). The Court ruled that a non-resident taxpayer, whether employed or self-employed, who receives all or almost all of his income in the State where he works is objectively in the same situation in so far as concerns income tax as a resident of that State who does the same work there. If such a non-resident taxpayer is not given the same tax treatment as regards deductions from his taxable income as a resident, his personal situation will be

(58) Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, O.J. 20 August 1990, n° L 225, p. 19.

(59) Commission decision of 12 April 1995 on State aid in the form of tax concessions to undertakings operating in the Centro di Servizi Finanziari ed Assicurativi di Trieste pursuant to Article 3 of the Italian Law No 19 of 9 January 1991, O.J. n° L 264, 7 November 1995, p. 30.

(60) See 1994 Report, para. 235.

(61) See 1994 Report, para. 238.

taken into account neither by the tax authorities of the State where he works - because he is not resident there - nor by the State of residence - because he receives no income there. Consequently his overall tax burden will be greater and he will be at a disadvantage compared to a resident. Therefore, the Court ruled that such a taxpayer suffers discrimination, for which there is no justification. These decisions confirmed the principles which the Commission had laid down in its Recommendation 94/79/EC\* of December 1993. The necessary changes to the tax legislation of the Member States are under discussion with the Heads of National Tax Administrations with a view to a coordinated approach in all Member States, some of which have decided to modify their legislation as a consequence.

---

## Section 8 - The business environment

### § 1 - Intellectual and industrial property

136. The Community has a number of tasks to perform in this field: ensuring free movement of goods and services protected by such rights, and providing a level playing field and a high level of protection within the internal market. A number of Community measures are as yet under discussion in Council and Parliament, while others have been adopted to ensure that the regulatory environment keeps pace with technical progress, such as developments in the information society.

#### A. Intellectual property

137. In July 1995, the Council reached a common position on the proposal for a directive on the legal protection of databases (62), which seeks to harmonise the copyright law applicable to database structures, in whatever form. It also envisages the introduction of a new economic right which would protect the substantial investments of database makers. Considering the important investment of human, technical and financial resources necessary to create a database, and given that the databases could be copied at a much lower cost than that of their development, such provisions are important. This proposal, once adopted, will be an important step forward for intellectual property rights owners in the context of the Information Society.

138. However, there are many other issues arising in this field. For this reason, the Commission published a "Green paper on copyright and related rights in the Information Society" (63) in July 1995. This Green Paper examines a range of issues arising from the impact of new technologies and the Information Society on copyright and related rights, particularly as regards the effects of measures in this area on the free movement of information society services. It will generate a wide debate with all interested parties, which should permit the Commission to define its working programme for the future. By outlining key questions, it offers a basis for reflecting on the pertinent issues not only within the European Union, but also at international level.

#### B. Industrial property

139. An important step was taken towards opening of the Office of Harmonisation in the internal market (trademarks and designs), situated in Alicante, Spain, with the adoption of the implementation regulations of the Community Trademark regulation of 1994. These arrangements are necessary to enable the OHIM to start its operations at the beginning of 1996; once

---

(62) COM (92) 24 final, OJ No C 156, 23.6.1992 as amended by COM (93) 464 final, OJ No C 308, 15.11.1993 - Common position No 20/95, OJ No C 288, 30.10.1995.

(63) COM (95) 382 final of 19.7.1995.

open, the Office will be competent for receiving applications for Community Trademarks which will be valid for the entire Community when they are granted (64).

140. In July 1995, the Commission adopted a Green Paper on Utility Models (65) which calls for a wide consultation of all interested circles on this specific form of industrial property protection for technical inventions. Utility model protection, a form of industrial property protection at a lower level than patents, is often used as a relatively quick and cheap means to protect technical inventions which are not particularly innovative (such as mechanisms or tools). This is done to improve innovative activity throughout the Community. SMEs are particularly encouraged to comment on this document.

141. At the end of the year, the Commission adopted a new proposal for a directive on the legal protection of biotechnological inventions (66), after the rejection of the first proposal by the European Parliament in March. The important decision to present a new proposal was taken after a in-depth analysis of the consequences of the absence of a legal framework for these inventions in the European Union. All concerns which were expressed during the discussions on the first proposal were carefully taken into account in the drafting of the new proposal.

142. This year, the United Kingdom has deposited its instrument of ratification of the Community Patent Convention (67) of 1989, bringing the number of Member States having made this formality to eight. The Community Patent is an important element for the completion of the Single Market and Member States which have not yet done so were encouraged to start without delay internal ratification procedures so as to make the Community Patent available to users as soon as possible.

## § 2 - Company law and financial information

143. The European Company Statute, still not adopted by the Council, would be an important instrument for the completion of the single market, since it offers companies from different Member States a means of restructuring their business and a mobility within the Community, neither of which are available to them under individual national laws. There is still considerable pressure from business for the adoption of the regulation, and the Competitiveness Advisory Group, chaired by Mr Ciampi, stated in its report to the Cannes European Council:

*"One major advance would be the adoption of the European Company Statute. Even more important than the potential cost savings involved, the ease for both smaller and larger companies to expand Europe-wide would greatly stimulate integration. In fact, the internal market will remain unfinished business so long as European companies cannot operate across the Union in a more flexible and efficient way".*

The Council has still not reached a common position on the proposed regulation on the statute for a European Company, due largely to persistent differences of opinion on the involvement of the employees in such a company. However, the Commission is hopeful that Directive 94/45/EC\*, which provides for the establishment of European Works Councils or procedures in Community scale undertakings and groups of undertakings, can act as the basis for a resolution of this issue and lead to the adoption of the regulation in the near future.

It is hoped that a resolution of the issues which have held up the adoption of the European Company Statute will also lead to a rapid adoption of the 10th company law directive (68) on cross-border mergers of public limited companies.

(64) See 1994 Report, para. 210.

(65) COM (95) 370 final of 19/7/95.

(66) COM (95) 661 final, not yet published.

(67) OJ L401 of 31/12/89.

(68) COM (84) 727.

144. The Commission is considering the preparation of a proposed directive governing the transfer of the seat of a company from one Member State to another. This would enable such a transfer to take place without the necessity (as at present) for the company concerned to undergo the complex and costly formalities of liquidation in its state of original incorporation and re-incorporation, as a new legal entity, in the state to which it wishes to transfer, and would represent an important contribution to the free movement of companies within the single market.

145. The Commission has also been following closely the current debate on wider issues of **corporate governance** which is being conducted within the business community at a European and international level, and remains vigilant for opportunities for simplification in this area. In accordance with the principle of subsidiarity, however, many of the issues involved can most appropriately be settled at national level.

146. Large European companies with an international vocation, the so-called global players, are faced with the problem that the accounts which they prepare on the basis of their national legislation following from the Accounting Directives are not considered satisfactory when they seek capital on the international capital markets. As a result, these companies are required to prepare two sets of accounts, one set which satisfies domestic requirements and another set which satisfies the requirements of the international capital markets.

The Commission has been seeking a solution for this problem which affects the competitiveness of European business. After extensive consultations with Member States and with interested parties, it has submitted a Communication to the Council in November 1995 which contains a number of proposals for a new accounting strategy (69). This strategy is fully in line with the principles of subsidiarity and proportionality.

Rather than amend the existing Directives, the Commission proposes to improve the present situation by associating the EU with the efforts undertaken by the International Accounting Standards Committee and the International Organisation of Securities Commissions towards international harmonisation of accounting standards. At the same time, it is proposed to improve the coordination of the activities carried out by the various bodies in Member States which deal with accounting standards. Such coordination will allow the EU to adopt positions on accounting issues with a view to the further enhancement of the comparability of financial information within the Union and the defence of those positions internationally.

As an immediate step, the Commission has decided to set up a working party with Member States which will examine the compatibility between International Accounting Standards and the Accounting Directives.

### § 3 - Commercial communication

147. During 1995 work has continued on a Green paper which will cover all forms of marketing communications including advertising, direct marketing, sponsorship, sales promotions and public relations. Based on a wide-scale consultation undertaken by the Commission at the end of 1994 and the beginning of 1995, the Green Paper, which should be published in early 1996, will provide an analysis of the current state of the Internal Market in this domain, and will make suggestions as to the needs for the Community's future policy in this area.

---

(69) COM (95) 508 final of 14.11.1995.



## § 4 - Media

### A. Media ownership

148. During the first half of 1995, the European institutions, the Member States and interested parties were consulted by the Commission on a possible initiative on media ownership. The results of this consultation indicate a shift towards a rather more positive position in favour of a Community initiative. In the light of the outcome of this consultation, the Commission may present during the first months of 1996 a proposal for a directive on media ownership, which would establish an equivalent level of protection of pluralism throughout the Community, by harmonizing some of the specific national rules on access to media ownership.

### B. Legal protection of encrypted services

149. As stated in the Communication "Europe's way to the Information society: an Action plan" (70) of July 1994, the Commission is currently preparing a Green Paper on the legal protection of encrypted services in the Internal Market. Working within the perspective of the Information Society, the Green Paper will examine to what extent the operation of the Internal Market, and more particularly the free movement of goods and services, is impeded by disparities between national regulatory approaches to the legal protection of encrypted services against illicit reception. In 1995 a wide range consultation with the interested parties was undertaken. On the basis of this consultation the Green Paper, which could be published in early 1996, will examine options for Community action.

### C. Audiovisual policy

150. On 22 March 1995 the Commission adopted a proposal for a Directive amending Directive 89/552/EEC\* on television without frontiers (71). Its purpose is to provide a stable legal framework conducive to the development of television broadcasting activities in the Union. The proposal clarifies the rules determining which legal system is applicable to broadcasters, the rules on the protection of minors and on the promotion of European works, and takes account of the new economic realities of the industry. It does not cover certain new "point-to-point" services such as video-on-demand (VOD), which will be the subject of a Green Paper on the development of new broadcasting services.

151. In February the Commission adopted a Communication with the aim of creating an environment which will stimulate dynamic growth in the European programme industry (72). It is accompanied by two proposals for Council Decisions, one on a training programme for professionals in the European audiovisual programme industry and the other on a programme to promote the development and distribution of European audiovisual works. The two programmes are intended to run for five years from 1 January 1996. In July 1995 the Council adopted the Decision on the "development and distribution" section of the programme, which will be given a budget of ECU 265 million over five years; under the cooperation procedure it approved and forwarded to Parliament its common position on the "training" section of the Programme for which the budget is set at ECU 45 million.

---

(70) COM (94) 347 final of 19.7.1994.

(71) COM (95) 86 final, OJ No C 301, 13.11.1995.

(72) COM (94) 523 final of 8.2.1995.

152. As regards the technological aspects, in June the Commission approved the first annual report (73) on progress in implementing the **Action Plan for the introduction of advanced television services in Europe** (74), the objectives of which are to encourage the emergence of a critical mass of advanced television services in the 16:9 format and a sufficient volume of programming in the 16:9 format and with high technical quality.

## § 5 - Protection of personal data

153. The Council and the European Parliament adopted Directive 95/46/CE\* of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

This Directive is a contribution to the smooth functioning of the internal market which is particularly important at a time when view data services, such as teleshopping, home banking or insurance services, distance education, and interactive video and audio services are developing in the context of the information society.

154. Differences in national laws in this area may create barriers to the free flow of data since a Member State could legitimately oppose the free movement of data on the grounds of inadequate or non-existent protection in the Member States of origin or destination.

Such barriers would have been particularly detrimental to the functioning of the internal market, one effect of which is precisely to generate flows of personal data. Aligning national laws on the text of the Directive will mean that the rights of individuals will have an equivalent level of protection throughout the Community, with Member States being prevented from erecting barriers to the circulation of data.

155. The Member States have a period of three years from the adoption of the Directive to transpose it into national law. The Commission is also to report on its implementation at regular intervals.

Its report could be accompanied by proposals for further harmonization. As a framework instrument leaving the Member States a degree of leeway, the Directive might require further legislation in particular areas, taking account of how the internal market functions.

## § 6 - Information Society Services

156. As explained in a Communication by Messrs Bangemann, Monti and Oreja of 22 March 1995 to the Commission, the regulatory framework for Information Society Services has to be anchored in the well proven principles of the Internal Market. While it is important to avoid any over-regulation at Community level, it is also vital to prevent any future fragmentation of the Internal Market arising from disparities between national laws. In this respect work was launched on a regulatory transparency mechanism, which should guarantee that future national legislation will not create new obstacles to the free circulation of such services.

---

(73) COM (95) 263 final of 16.6.1995.

(74) JO No L 196, 5.8.1993, p. 48.

## Section 9 - Public procurement

**157.** During the year, the application of the public procurement rules intensified considerably because the rate at which Community texts were transposed into national laws improved and potential complainants were more familiar with their rights. A major step was taken towards the completion of the internal market in the field of public procurement.

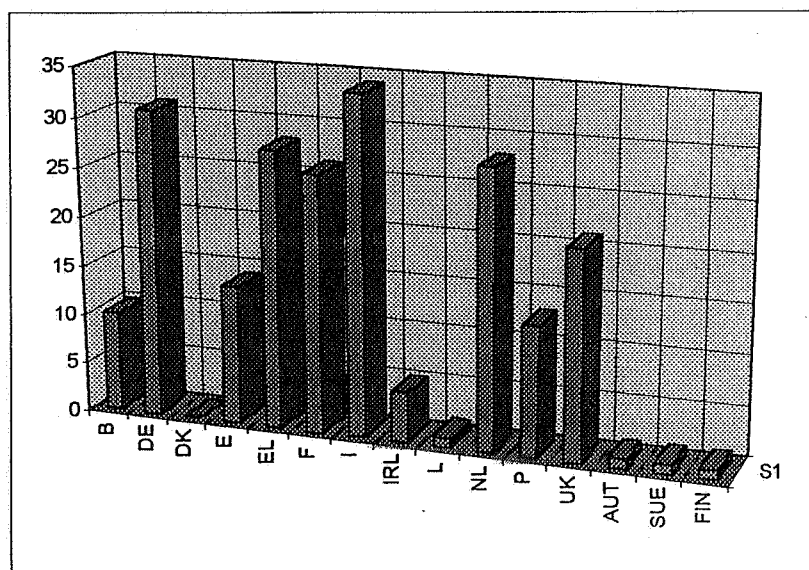
The Commission also made proposals to amend the public procurement directives following the Agreement on Government Procurement.

### § 1 - Application of the Community rules

**158.** As well as continuing to investigate cases in which transposal measures had not been communicated or were incorrect (see section 2.1), the Commission stepped up its checks on application of the rules by contracting authorities and contracting entities in each of the Member States.

**159.** It also dealt with infringements, discovered as a result of complaints or through its own investigations, in the application of the rules of Community law that can be relied on in the public procurement field (directives and Treaty articles). There are now 214 cases in which an infringement procedure for misapplication of the directives has been opened (see table below).

TABLE IV - INFRINGEMENTS FOR MISAPPLICATION OF PUBLIC PROCUREMENT DIRECTIVES: 214



## A. Action by the Commission

160. Of the 244 cases dealt with in 1995 (including 92 new cases opened), the Commission settled matters with the Member State concerned in 38 cases before the infringement proceedings had run their full course. To that end, it set up procedures for dialogue and consultation (in particular through bilateral meetings with individual Member States to discuss a range of issues) in order to offer Member States the legal and technical assistance they need and to endeavour to find mutually acceptable solutions to disputes in accordance with Community law.

161. A few examples are worth mentioning:

- Two municipalities in the **Netherlands** had stated in contract notices concerning the development of specialized transport systems that suppliers of services must be members of the Dutch transport organization and that the training of their employees must meet the requirements laid down by that organization. These two conditions contravened Community provisions and were dropped following requests by the Commission.
- An **Italian** law (75) contained a provision which required contractors to accept a reduction in remuneration during the contract if they did not wish to be excluded from other contracts or risk the termination of the contract. The law also provided that maximum reference prices were to be observed for all future public contracts. Following intervention by the Commission, these provisions, which infringed the general principles of proportionality, legitimate expectation and non-discrimination as well as several provisions of the public procurement directives, were repealed and replaced by a new set of provisions which complied with Community law.
- A public hospital in **Greece** launched a procedure for the supply of oil during which, at the stage of awarding the contract, it rejected a supplier's tender because he had not presented certificates relating to his own suppliers. Rejection of the tender when it was being evaluated ignored the distinction made by the directives between the selection and award stages. Following contacts made by the Commission, the Greek authorities undertook to adopt general measures to prevent the recurrence of this type of difficulty, which is fairly frequent in Greece.

## B. Decisions by the Court of Justice

162. The following decisions by the Court of Justice may be noted:

- As regards admissibility of review, for the first time the Court decided, in its judgement of 24 January 1995 (76) (*Commission v. Kingdom of the Netherlands*), on the possible impact of the procedure laid down by Article 3 of the Review Procedure Directive 89/665/EEC\* on the procedure laid down by Article 169\* of the Treaty. The Court stated that this procedure was a preventive measure which could not derogate from or replace the powers of the Commission under Article 169\* of the Treaty, which gives the Commission discretion to refer the matter to the Court when it considers that a Member State has failed to fulfil an obligation under the Treaty and that the Member State concerned has not complied with the reasoned opinion of the Commission. The Court confirmed this principle in its judgement of 4 May 1995 (77) (*framework agreement for the supply of dressing material (Commission v. Republic of Greece)*)

---

(75) Law N° 537/93, Art. 6.

(76) Case C-359/93; judgement delivered on 24 January 1995.

(77) Case C-79/94; judgement delivered on 4 May 1995.

- Failure to transpose Directives 89/440/EEC\* and 88/295/EEC\*: before the expiry of the period set in the reasoned opinion, Directives 89/440/EEC\* et 88/295/EEC\* had in Germany been the subject only of administrative rules. The Court reiterated its case law concerning the transposition of directives: the need for a full application of the Directive in a sufficiently clear and precise manner, so that, where the Directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts.

## § 2 - Development of Community legislation

**163.** The new World Trade Organization Agreement on Government Procurement requires limited amendments to Community Directives on public procurement to avoid reverse discrimination which would penalize European firms and operators and to make the Directives easier to apply following the Agreement.

These amendments were the subject of two draft proposals for European Parliament and Council Directives, one amending Directives 92/50/EEC\*, 93/36/EEC\*, and 93/37/EEC\*, and the other amending Directive 93/38/EEC\* (78). These drafts were adopted by the Commission on 29 March 1995 and are under discussion in Parliament and the Council.

## § 3 - Other activities

### A. "SIMAP" project

**164.** An important development in the public procurement area during 1995 was the launch of two pilot projects as part of "SIMAP" (Système d'Information pour les Marchés Publics or Information System for Public Procurement).

In the first pilot project, 75 contracting entities designated by the Member States will use electronic mail to send notices of tender opportunities and contracts awarded for publication in the Official Journal of the EU and in its on-line equivalent TED (Tenders Electronic Daily).

The second pilot project will provide tools to give suppliers easier on-line access to information on tender opportunities and contracts awarded, plus other information already available in the Member States which can help them respond more competitively to public procurement opportunities. Examples of such information include tenders with a value lower than the thresholds specified in EU legislation, environmental issues, information on local conditions and practices, price levels, help for business in finding local partners when bidding for contracts in other Member States, help in the translation of calls for tender, standards and electronic product catalogues.

All Member States, with the exception of Belgium and Italy, are participating in the first of the two pilot projects. Norway and Iceland, as EEA members, are also participating, and interest has also been expressed by Switzerland.

The Commission is disappointed about the lack of participation in the second pilot project, for which only three Member States have proposed participants. The Commission emphasizes the importance of this project: suppliers often complain about the inadequacy of the tender information which is available to them, and this pilot project is intended to develop and test ways of providing better and more reliable data, thus contributing to more efficient public purchasing.

---

(78) COM (95) 107/1 & /2 final, OJ No C 138, 3.6.1995.

**B. Improvement of participation of SMEs in public procurement**

**165.** Following an exhaustive analysis of actions to support SMEs, the Commission will shortly be in a position to present a Communication setting out a range of practical measures that might be taken. No simple solution exists which would enable SMEs to get the best out of the opening up of public procurement. It is advisable, rather, to rely on containing action in a range of areas in order to help those SMEs with the necessary dynamism to take advantage of the opportunities open to them. This will imply a concerted approach by all the actors involved: the Commission, the Member States, contracting authorities, the enterprises themselves and others.

**C. Defence Procurement**

**166.** In reaction to the international developments in recent years, all Member States have decided to cut their defence budgets. This has created renewed interest in applying good procurement practices also to defence purchasing, in order to get the best value out of reduced military budgets.

**167.** In June 1995 an informal study group consisting of representatives from the Western European Union (WEU), the Western European Armaments Agency (WEAG) and the European Commission submitted a final report, which included recommendations to open up European defence markets to competition and suggested EU procurement rules be adopted to realize that objective.

---

## Section 10 - Transport, Energy and Telecommunications

### § 1 - Transport

168. The basic legal framework of the Internal Transport Market is in place and the rules are being incorporated in national legislation. However, some of the most important measures are only gradually being phased in. This is particularly the case in the cabotage field where air transport cabotage will be fully liberalised by 1 April 1997 and road haulage cabotage on 1 July 1998. Maritime cabotage has a number of transitional rules: for example, liberalisation of a very substantial part of domestic Greek services will only take place on 1 January 2004.

169. Certain issues of secondary importance which were not included in the 1992 priority programme or which were not anticipated will have to be addressed and some existing measures require follow-up actions. This is particularly the case in the railway field where the first liberalisation step is being followed by technical and non-technical measures required to encourage the development of railways in the Internal Market.

170. While some progress has been made with regard to the external dimension of transport services, widespread reluctance by Member States means that overall progress is unsatisfactory. Substantial work and political will is needed to achieve a balance between internal achievements and hitherto unsatisfactory implementation of the external dimension.

#### A. Air transport

171. Member States and airlines have reacted positively to the Third Package of liberalisation (79), which has implemented, since January 1993, the freedom to provide services in the field of air transport. In 1995, the Commission has received few complaints. The most notable case concerned again the traffic distribution rules at Orly: the Commission decided, in March 1995, that the new rules were compatible with Community law, with the exception of some disproportionate provisions (80).

172. The progress of the internal market in the air transport sector has been thoroughly analysed in the British Civil Aviation Authority's last report *The Single European Aviation Market: Progress So Far* (September 1995) (81). The survey shows that important competitive developments have taken place since 1993. Although there is still room for more competition, it concludes that the practical success achieved in implementing liberalisation through the Third Package is cause for optimism about the future of airline competition in the EU, particularly after 1997, when domestic cabotage is fully liberalised. In particular, the CAA study positively acknowledges the effectiveness of the action undertaken by the Commission to enforce internal market legislation.

---

(79) OJ No L 240, 24.8.1992.

(80) OJ No L 162, 13.7.1995.

(81) CAP 654.

The Council and Parliament are discussing the Commission's proposal of December 1994 on the liberalisation of groundhandling services (82), which are often the monopoly of the national carrier or of the airport authority at Community airports.

## **B. Road transport**

173. Here a number of Member States have taken encouraging action to improve compliance with common rules. This will improve the functioning of the internal market, enhance road safety and bring conditions of competition closer together, especially through the stepping-up of checks.

In consultation with government experts, the Commission also embarked upon measures to improve access to the trade of road haulage. This should lead to a proposal for legislation, the main aim of which should be to improve the quality of services supplied.

## **C. Inland waterways**

174. In September 1995 the Council had a preliminary discussion of the proposal for a Regulation for Community rules of access to inland waterway transport between Member States (83), implementing the principles of freedom to provide services. The discussion showed that the Council was broadly in favour of the proposal.

The Commission submitted to the Council on 23 May 1995 comprehensive proposals on inland waterway transport, in particular with regard to a progressive liberalization of the market by the year 2000 and a new scrapping action for reducing the existing structural overcapacity in this sector. With a view to promoting inland waterway transport, the Commission also proposed enabling Member States to co-finance investment in terminals, and fixed and mobile equipment needed for loading and unloading. The Council agreed in principle on 7 December 1995 on the Commission's approach.

## **D. Maritime Transport**

175. The first report on the application of the single market rules on maritime cabotage (Regulation (EEC) 3577/92\*) was adopted by the Commission in September 1995. It shows that the economic effects of the liberalisation, have, up to now, been inconclusive. Only 6% of the 22 million tonnes of cargo which was liberalised was transported on ships flying other than national flags. This volume represents only 1% of the total cabotage trade of the southern Member States. Nevertheless, the more the sector is liberalised, the more it will be possible to increase the efficiency and the future role of short sea shipping in Europe.

176. Infringement procedures were continued against different Member States for breach of Regulation (EEC) 4055/86\*: these infringements concerned mostly cargo-sharing arrangements in bilateral agreements with third countries.

## **E. Railways**

177. The progressive application of the principle of freedom to provide services in the railway sector, under Directive 91/440/EEC\* created rights of access which open the possibility of new enterprises entering the market and of several enterprises using the same infrastructure. The Community therefore considered it necessary to define the general conditions for applying the access rights and, in June 1995, adopted two complementary directives: the first on the licensing of railway enterprises and the second on the allocation of railway infrastructure and the charging of infrastructures fees (Directives 95/18 EC\* and 95/19 EC\* respectively).

---

(82) COM (94) 590 final, OJ No C 142, 8.6.1995.

(83) COM (95) 167 final, OJ No C 164, 30.6.1995.



178. The Commission now believes that it is time to take a second step in creating an integrated market, while fully recognising the specific character of the railways. In a communication to the Council, adopted in July, it proposed the extension of these access rights to cover international passenger services and all freight services, domestic and international. It considers that this extension will help increase competitiveness of rail transport, particularly at Community level, by attracting new capital and enterprises to the sector.

## § 2 - Energy

### A. New Internal Energy Market Legislation

179. Since early 1994 the Council has been discussing the amended proposal for the internal market for electricity (84). In November 1994, the Council requested the Commission to examine the possibilities of co-existence and reciprocity between the Single Buyer and the Commission's negotiated Third Party Access approaches. The Commission prepared a Working Paper on the organisation of the Internal Electricity Market which was adopted on 22 March 1995 (85). It concluded that there could be no reciprocity between the two approaches unless substantial modifications were made to the Single Buyer Model.

180. The Commission, also at the request of the Council, prepared a Working Paper on small and very small electricity systems in the Internal Electricity Market, which was adopted on 10 May 1995 (86). It concluded that small systems do not need special treatment because of their size.

The Energy Ministers Council of 1 June 1995 followed the Commission's Working Paper conclusions agreeing that there can be no coexistence between the negotiated TPA and the Single Buyer approaches unless changes are made in the Single Buyer model.

Under the Spanish Presidency the Council intensified its discussions and, whilst it was not possible to reach a common position at the Energy Council on 20 December 1995, considerable progress was made. The negotiations on the Directive have reached the final stage with the key issue to be resolved being the inclusion of distributors as eligible customers. It is hoped that sufficient progress can be made on this issue to enable a common position to be adopted under the Italian Presidency in 1996.

### B. Free Movement of Goods

181. The Commission has directly applied Treaty rules in parallel with the legislative approach. Thus in the field of free movement of goods, the Court of Justice is still examining the infringement procedures against five Member States for electricity and gas import and export monopolies, on the basis of Articles 30\*, 34\* and 37\* of the Treaty of the European Union.

---

(84) COM (91) 548 final, OJ No C 65, 14.3.1992 as amended by COM (93) 643 final, OJ No C 195, 18.7.1994.

(85) Doc. SEC (95) 464 final.

(86) Doc. SEC (95) 685 final.

### C. Transposition

**182.** In comparison with the previous year, the level of transposition of Directives in the energy sector into national law has improved. The percentage of transposition has reached 89%.

One of the central issues in 1995 has been the transposition of the Hydrocarbons Directive, which so far has been transposed in six Member States. Within the framework of this Directive some Member States have published rules on exploration areas and authorisation procedures.

### D. Standardisation

**183.** The Commission has adopted a communication on the broader use of standardisation in community policy. Concerning Energy policy, the communication stated that energy efficiency would become an essential requirement in the so-called "new approach Directives". This would permit the Commission to give mandates to the new European standardisation organisations in order to establish standards limiting the energy consumption and improving the energy efficiency of the electricity consuming appliances. The aim is to avoid national regulations affecting free movement of goods in the internal market.

## § 3 -Telecommunications

**184.** The publication at the beginning of the year of the "Green Paper on the liberalisation of telecommunications infrastructure and cable television networks" (87) is an important contribution to the setting up of the regulatory framework for telecommunications which is due on 1 January 1998.

The views expressed in the ensuing consultation have resulted in a speeding up of the liberalisation of infrastructure. The Commission has adopted a Directive allowing the use of cable television infrastructure to deliver liberalised telecommunications services from 1 January 1996. It has also published for consultation a draft directive liberalising mobile communications (88), which would enable competitive provision of infrastructure for mobile networks from 1996, and another one providing for the full liberalisation of telecommunications services and infrastructure by 1998, also including liberalisation of alternative infrastructure for liberalised services from 1996 as one element of the general amendment of the 1990 Services Directive to prepare for 1998.

**185.** A new proposal for the open network provision (ONP) voice telephony directive which had been rejected by the Parliament last year in the codecision procedure, was presented in 1995 by the Commission (89). This proposal is the first step towards the creation of a framework for interconnection, as well as establishing a consensus around the basic elements of a universal service in the Union. Parliament has proposed an amendment requiring national regulators to ensure compensation where quality criteria set out in the contracts are not met.

**186.** The Commission made a proposal in July 1995 for a Directive on Interconnection in Telecommunications (90) ensuring universal service and interoperability through application of

---

(87) COM (94) 440 final of 24.10.1994.

(88) Draft Directive of 24.06.95, amending 90/388/EEC, published in OJ No C 197, 1.8.1995.

(89) Common Position No. 17/95, adopted 12.7.1995.

(90) COM (95) 379 final, OJ No C 313, 24.11.1995.

ONP principles. The terms and cost of interconnection will be the major commercial issue brought before national regulators over the next few years.

**187.** The Commission has prepared a proposal for a Directive on a common framework for general authorisations and individual licences in the field of telecommunications services (91). This proposal would lighten the regulatory burden on operators, service providers and on business in general, as general authorisations would become the norm, individual licences being needed only in exceptional situations.

**188.** With the new proposal by the Commission for a Decision on an action at Union level in the field of satellite personal communications services (92), a significant step will be taken towards a truly global information structure.

**189.** The future regulatory framework should aim at the extension of competition to the whole telecommunications sector on the basis of efficient economic conditions and at the delivery and development of universal service within the Union and at the establishment of rules of interconnection. A hearing on universal service was held by the Commission in October and a communication is being prepared with a view to adoption early in 1996.

#### **§ 4 - Trans-European Networks** (93)

**190.** The interconnection and interoperability of trans-European networks are vital for improving the functioning of the Internal Market and sustaining competitiveness, jobs creation, and cohesion in the European Union.

**191.** Progress has been made since the Essen European Council, but there remain substantial problems related to the prioritisation of TEN projects and their financing that require greater effort. The Commission's work has shown that Member States are undervaluing the benefits of TEN projects using current cost/benefit methods. The benefits for all Member States in fact justify more priority for TEN projects in national plans. Further progress concerning environmental projects will depend on the political will of the Member States to involve the EU in such projects.

**192.** On their financing, there need to be more efforts to introduce private/public partnerships for TEN projects, which are vital if the TEN are to be accelerated. The Commission has taken measures including the setting-up of a One-Stop Help Desk on its application of the EU competition and public procurement rules. It calls on the Member States also to encourage the change in attitudes that are needed both in the public and in the private sectors. As far as the Community budget for the transport TEN is concerned, requests far exceed available resources and financial shortfalls are apparent for several priority projects. These factors must be taken into account by the appropriate authorities when taking the necessary decisions, requested at Essen, to top up funds currently available for the TEN.

---

(91) COM (95) 545 final, not yet published.

(92) COM (95) 529 final, not yet published.

(93) See Report on this subject to the European Council: CSE (95) 571.

## Section 11 - The Internal Market and other Community policies

### § 1 - Competition policy

**193.** Experience of applying competition policy shows that in many sectors national markets still prevail.

In some sectors this is due to national preferences based on cultural differences or to transport costs, and cannot therefore be considered to reflect a lack of a single market framework. However, for a number of sectors the reasons for the absence of competition in national markets are different: on the one hand slow progress in opening up the national regulatory frameworks in a number of sectors (telecommunications, energy, postal services) and on the other hand the time it takes for firms to adjust to the new possibilities created by the elimination of national barriers in sectors where the internal market legislative programme has been completed. Some firms may try to slow down the process by anti-competitive behaviour. Most will try to take advantage in pro-competitive ways but need time to find suitable partners and trade channels abroad.

**194.** The following recent competition policy developments and decisions especially relevant to the achievement of the internal market are worth individual mention:

- Restrictive agreements (Articles 85/86\*) - The Commission adopted a new block exemption for certain categories of motor vehicle distribution and servicing agreements. The aim of the regulation is to intensify competition at the distribution stage by giving dealers greater commercial independence vis-à-vis manufacturers, by giving independent spare part manufacturers and distributors easier access and by improving the position of consumers in accordance with the principles underlying the internal market. The new regulation took effect on 1 October 1995, although for existing contracts the old regulation will apply until 1 October 1996.

The Commission has received numerous complaints from individual citizens in the EU, mostly from Austria, Germany and France, who have been prevented from purchasing a car in Italy and Spain where prices were relatively low. Any policy to prevent or obstruct consumers from buying at the location they consider most advantageous runs the risk of being incompatible with the block exemption and may lead to loss of the benefit of the exemption.

The Commission adopted guidelines for the application of the competition rules to cross-border credit transfer systems. The guidelines assist banks when implementing the directive on cross-border credit transfers (94). The aim is to allow more efficient ways of handling cross-border credit transfers without unduly restricting competition.

- Monopolies (Article 90\*) - The liberalisation of traditionally monopolised markets, such as utilities, is an essential step in the establishment of an internal market (95). The Commission has pursued its efforts to open up these markets to competition and intra-Community trade while ensuring that the measures proposed or adopted are compatible with the maintenance of universal service.

(94) See para. 118

(95) See also Section 10.

Progress can be observed in the telecommunications sector with the adoption of directives and draft directives aiming at the liberalisation of the use of cable tv networks for the provision of telecommunication services, the liberalisation of mobile communications and the full liberalisation of telecommunication infrastructures and services (including voice telephony) by 1 January 1998. These initiatives are fundamental steps towards the information society.

The Commission also proposed a draft directive to the Council and the Parliament and adopted a draft Commission notice, both aiming at a progressive liberalisation of the postal sector (96).

The situation in the energy sector is less satisfactory. No agreement has been reached so far in the Council on the draft directives presented by the Commission for the internal market for electricity and gas (97), despite the fact that the Commission has already modified its original proposals in order to meet the concerns expressed by some Member States.

- **Mergers** - As described above the internal market stimulates firms to look for cross-border cooperation and mergers. In this light the Commission started reviewing a possible lowering of the notification thresholds under the merger regulation, which is now the subject of a Green paper (98).

In a number of cases the Commission decided that in view of preferences for the own-country product, differences in technical standards and (safety) regulations etc. the markets investigated are still national in character. Examples are the markets in Germany for buses (Mercedes-Benz/Kässbohrer case) (Decision 95/354/CE\*) and for rail transport equipment (ABB/Daimler-Benz case) (99).

- **State aid** - The obligation imposed upon Member States by the Treaty to notify aid projects and the prohibition on granting the aid before approval by the Commission is intended to prevent aid incompatible with the internal market from being granted. The Commission recalled in a communication to Member States on 10 May 1995 (100) its intention to make use of all its powers under the Treaty to oblige Member States to comply with these obligations. National courts have an important role to play in protecting the rights of competitors of recipients of aid granted unlawfully. The Commission adopted a notice on 31 October 1995 (101) explaining how national courts apply the rule that Member States are not allowed to give state aid before it has been notified and approved. The notice also offers assistance to national judges who deal with such cases. The judge may, in appropriate cases, order the Member State to pay damages to a party who has suffered as a result of the illegal aid.

## § 2 - Social dimension of the internal market

195. Social policy remains integral to the completion of the internal market. The progressive economic integration of the Union, and the completion of the internal market, raise a wide range of social issues, in particular regarding their impact on citizens' living and working conditions. Progress has been made on these issues, and in April the Commission adopted a medium term Social Action Programme, which sets out its detailed work programme in the social field for the period 1995-1997(102). However, but the Commission regrets that during 1995 a number of proposals remained blocked in the Council, and that the level of

(96) COM (95) 227 final, OJ No C 322, 2.12.1995.

(97) COM (91) 548 final, OJ No C 65, 14.3.1992 as amended by COM (93) 643 final, OJ No C 195, 18.7.1994.

(98) COM(96) 19, 31.01.1996

(99) Not yet published.

(100) OJ No C 156, 20.6.1995.

(101) C (95) 2436 final.

(102) COM (95) 134, 12.04.1995

communication by Member States of national measures implementing EU health and safety legislation (75% by October 1995) is lagging behind that of other legislation.

**196. Equality** - The Fourth Equal Opportunities Action Programme (103) sets out the general framework for action in this key area for the period 1996-2000. In February 1995, the Commission launched consultations with the social partners under the Agreement on Social Policy to consider the possibility of negotiating an agreement on reconciliation of professional and family life. The aim would be to promote equal opportunities and to introduce new flexible models better suited to the changing needs of European society. On 6 November 1995 the social partners announced a pre-agreement which is favourable to such an approach.

The Commission has also launched consultations with the social partners on possible action on the burden of proof in possible discrimination cases. Following this consultation under the Agreement on Social Policy, the Commission will take steps to carry the process forward in line with Article 3 of the Agreement.

Concerning equal treatment in occupational social security schemes, on 16 May 1995 the Commission presented a proposal (104) for a Council Directive modifying Directive 86/378/EEC\*. This would bring it into conformity with Article 119\* of the Treaty as interpreted by the judgement of the Court of Justice in the *Barber* case of 17 May 1990 (105) and in subsequent cases. This would avoid confusion in the application of Community law.

The Commission has also launched a number of technical studies to test the neutrality of taxation systems on the individual autonomy of women. Further technical studies will follow on the costs and consequences for different social security regimes and benefits of treating each member of a couple as an individual, rather than the couple as a single unit. Studies will also consider the implications of this for part-time and full-time work.

**197. Labour law** - The Commission has launched consultations under the Agreement on Social Policy relating to flexibility of working time and security in employment in order to obtain the social partners' views on the desirability of measures in favour of equal treatment between full-time, part-time and temporary workers. The Commission also presented the Fourth Health and Safety Action Programme (106), covering the period 1996-2000, setting out a range of measures to safeguard the working environment.

### § 3 - Consumer policy

#### A. Consumer behaviour - cross-border purchasing

**198.** The willingness of consumers to shop across frontiers in another Member State was examined in a Eurobarometer survey in the Spring of 1995. The number of consumers making purchases across frontiers in another EU Member State is now 24%.

**199.** The range of goods and services which consumers purchased across borders may be illustrated as follows:

- 12.3% of EU Adults purchased clothing, footwear, etc.;
- 11% of EU Adults purchased travel related services;
- 5.5% of EU Adults purchased financial services;
- 3.8% of EU Adults purchased durable goods (TV's, cars, washing machines, etc.);

(103) COM (95) 381, 19.07.1995

(104) COM (95) 186 final of 16/5/95.

(105) Case C-262/88; judgement delivered on 17 May 1990.

(106) COM(95) 282, 12.07.1995

- 0.6% of EU Adults purchased property (fixed);
- 7.1% of EU Adults purchased something else (food, drink, etc.).

200. The table below shows the percentage of consumer in each Member State who had engaged in cross-border shopping in the year to April 1995:

L	NL	D	B	S	DK	A	UK	FIN	IRL	F	I	P	E	EL	EU
69.4%	44.4%	37.5%	35.6%	33.7%	31.6%	29.6%	27.2%	22.7%	18.8%	17.5%	11.4%	10.1%	8.8%	8.9%	24.0%

This reflects awareness of single market opportunities and confidence in the arrangements made by the EU to protect consumers and indicates that consumer demand is potentially mobile.

## B. Consumer policy priorities 1996-1998

201. In October, the Commission adopted a Communication on the priorities for Consumer Policy 1996-1998 (107). The aim of this communication is to indicate the orientation of consumer policy for the next three years.

202. Ten priorities for action have been identified:

- Intensify efforts to improve the education and information of consumers;
- Complete, revise and update the framework required to ensure that the interests of consumers are fully taken into account in the internal market;
- Consumers and financial services;
- Protect the interests of consumers in the supply of essential public utility services;
- Take steps to allow consumers to benefit from the advantages of the information society;
- Take steps to increase the confidence of consumers in foodstuffs;
- Encourage the adoption of sustainable consumption behaviour;
- Strengthen and increase the representation of consumers;
- Assist the countries of Central and Eastern Europe to draw up policies in favour of consumers;
- Reflections on the question of consumer policy in the developing countries.

## § 4 - Environmental policy

203. Environmental policy is an essential component of the creation of the internal market. An integrated approach, to enable a more sustainable path of social and economic development, is not only vital for the environment itself but also for the long-term success of the Internal Market. Its success is dependent on the sustainability of the policies pursued in the fields of industry, energy, transport, agriculture and tourism, which must take into account the capacity of the environment to sustain them. Moreover, effective environmental protection, which goes beyond national borders, can only be achieved in the framework of a functioning internal market and common environmental rules.

(107) COM(95) 519 final of 31.10.1995.

## **A. Integration of environment and single market policy**

**204.** In the context of the follow-up to the Strategic Programme and the White Paper on Growth, Competitiveness and Employment, the Commission has prepared draft general guidelines on regulatory policy (108). These guidelines aim to ensure wide consultation and appropriate evaluation of costs and benefits including environmental ones and will help ensure consistency between different policy objectives, including single market and environmental policy.

**205.** Examples of efforts to take account of the environmental dimension in single market policy may be found in the field of insurance. In order to encourage the integration of the environment into insurance policy, in 1994 the Commission proposed to the Insurance Committee that, due to the evolution of the market, a separate class of risk should be introduced into the annex of the First Directive on non-life assurance, for the approval of companies proposing the insurance of risks of damage to the environment. Although it was positively received, the implementation of this measure depends on a fundamental reform of the classification of types of risk.

## **B. Approximation of laws and other Community legislation in the environmental field**

**206.** A substantial number of product-related harmonisation measures have been introduced to achieve an environmental objective. They have been based on Article 100a\* or Article 130s\*. The positive impact on the complexion of the Internal Market is clear, as there is less need for Member States to adopt unilaterally environmental standards which could become barriers to trade.

**207.** Pesticides are regulated by directive 91/414/EEC\*, whose annexes were modified during 1995. The proposal for a Council directive on biocides (109) has as objective to assure a single market for biocides (Biocidal products comprise a wide range of products necessary for the control of organisms that are harmful to human or animal health). Council Regulation (EEC) 793/93\* of 23 March 1993 covers the evaluation and control of the risk of existing substances. As regards Directive 67/548/EEC\* on classification, packaging and labelling of dangerous substances, works aimed to maintain classification updated continued during 1995.

**208.** Directive 94/62/EEC\* on packaging and packaging waste aims to harmonise national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States, thus providing a high level of environment protection and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade, distortion and restriction of competition within the Community. It should be brought into force by Member States before June 1996.

**209.** A political agreement on the proposal to regulate the trade in wildlife was reached in June 1995. If this proposal is adopted, it could enter into force on 1 January 1997.

**210.** The Ecolabel, awarded to products with reduced impact on the environment, was expanded in 1995 to include laundry detergents. This allows the consumer to identify environmentally friendly products throughout Europe, irrespective of the country of origin.

**211.** In order to insure that the Internal Market is accomplished in the framework of a sustainable transport policy, Community legislation sets limits values for polluting emissions such as hydrocarbons (HC), carbon monoxide (CO), nitrogen oxides (NOx), benzene (Bz) and evaporative VOC emissions from transport and storage of petrol. The last directive on car emissions is

---

(108) Doc. SEC (95) 2255.

(109) COM (93) 351 final, OJ No C 239, 3.9.1993 as amended by COM (95) 387 final, OJ No C 261, 6.10.1995.



Directive 94/12/EC\* which sets differentiated emissions standards for petrol and diesel cars to come into force for all new vehicles in 1997. The Commission has made a proposal for a directive on the assessment and management of air quality (110). Regarding CO<sub>2</sub> emissions, the Community committed itself under the UN Framework Convention on climate change to stabilizing its CO<sub>2</sub> emissions by the year 2000 at the level of its emissions in 1990. There is a particular cause of concern as CO<sub>2</sub> emissions from traffic are growing substantially in line with traffic growth which jeopardizes the Community's CO<sub>2</sub> stabilization target.

**212.** Council Regulation (EEC) No. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community became of application in 1994. During 1995, however, the functioning of the system laid down by this Regulation which provides for extensive authorization and monitoring procedures for shipments of waste has improved and has become more operational. This was mainly due to the fact that since 1 February 1995 all planned shipments of waste have to be notified by means of a standard consignment note, which consists of a notification form and a movement/tracking form. Implementation problems were discussed by a group of correspondents of the Commission and the Member States which meets twice a year.

**213.** The Commission plans to publish a Communication in 1996, suggesting a framework for the use of environmental levies and charges in Member States. The objective of the Communication is to clarify how such levies and charges can be used efficiently by Member States, while also respecting legislation on the internal market and other relevant EU legislation.

**214.** Austria, Finland and Sweden have a transitional period of four years from their accession to the Union during which they can apply their more stringent national provisions on environmental standards. The agreement reached strives to reconcile the requirements of free circulation of goods with the legitimate insistence of the new Member States on avoiding a lowering of their environmental standards.

## **§ 5 - Small and medium-sized enterprises**

**215.** The Commission's Integrated Programme in Favour of SMEs and the Craft Sector (111) implements the measures necessary to achieve the objectives set out in the Commission's White Paper on Growth, Competitiveness and Employment (112). This highlighted the need to create as favourable as possible a business environment, particularly for SMEs, recognizing the crucial contribution they would make towards economic growth and employment creation. The Integrated Programme reinforces the coordination of national/regional and Community policies which could have a positive impact on SMEs. Concerted actions with both Member States and the Business Community have already started.

**216.** A Forum was organised in June 1995 in Paris, under the auspices of the Committee on the Simplification of the Business Environment, to examine legislative and administrative constraints confronting entrepreneurs in setting up a business and getting through the first few years of existence. This will be followed-up by workshops to consider the issues more thoroughly, and ultimately to decide on the best practice which might be taken up by Member States.

**217.** A second concerted action involving Member States' authorities and European Business Organisations was held in Madrid on 16 and 17 November 1995 which exchanged views and ideas based on best practice in respect of support measures for business start-ups and for enterprises in the first few years of their development. Again, the intention will be to benchmark best practice and consider how this can be put into effect by other Member States.

(110) COM (94) 109 final, OJ No C 216, 6.8.1994 as amended by COM (95) 312, OJ No C 238, 13.9.1995.

(111) COM (94) 207 final of 3.6.1994.

(112) Commission White Paper on Growth Competitiveness and Employment, December 1993.

**218.** The Community supports SMEs wanting to grow and take advantage of the opportunities provided by the single market through a variety of instruments under the umbrella of the 1993/1996 Multi-Annual Programme for SMEs, including the business information network (the Euro-Info-Centres) and the transnational co-operation networks and programmes, (BC-Net, BCC, Europartenariat and Interprise).

**219.** In 1995, the Euro-Info-Centre network has been extended to the new Member States and Correspondence Centres have been opened in some Central and Eastern European countries and in the Mediterranean region.

"Europartenariats", designed to encourage contact and co-operation between businesses from less developed regions or regions in industrial decline and enterprises from other Member States or non-Community countries, were held in Dortmund and Lisbon. Over 40 smaller "Interprise" events will have taken place in 1995 by the end of the year.

As requested by the European Council at its Cannes meeting in June, the Commission prepared a report on SMEs (113) as a dynamic source of employment, growth and competitiveness in the EU for submission to the European Council at its December meeting in Madrid. It covers proposals on such areas as the tax and administrative environment of SMEs, labour legislation, better access to financing, new technologies and training. The Community contribution to the creation and development of SMEs will be reinforced through a new Multi-Annual Programme for SMEs and the craft sector (1997/2000) which the Commission will propose in 1996, by reviewing priorities in existing policies, and by proposing complementary measures, in particular to help SMEs to exploit the potential of the Internal Market and to enhance their competitiveness in international markets.

## § 6 - Education and Training

**220.** Action by the Commission in the area of education and professional training this year has concentrated on developing the conclusions of the Essen European Council, according to which qualifications and access to life-long training are essential to the mastery of technological development and individual employment potential.

**221.** The White Paper on Education and Training (114) identifies the initiatives to be implemented up to the end of the century:

- opening up new methods for the recognition of competences, whether obtained through training certified by a diploma or in the course of professional life;
- bringing school closer to business, particularly by developing apprenticeship at European level;
- fighting against exclusion, by offering young people who have failed in the context of the traditional teaching system a second chance at school;
- promoting the mastery of three European languages, to be encouraged by a quality label for "European classes";
- ensuring equal treatment for physical investment and investment in training.

The preparation of the European year of lifelong education and training, currently in preparation for 1996, also constitutes an important initiative in this area.

**222.** Finally, the work has continued on the implementation of the three recently adopted programmes, SOCRATES, LEONARDO and YOUTH FOR EUROPE III. SOCRATES emphasises the deepening of the European dimension at all levels of education, for example by promoting the teaching of languages and the mobility of teachers and students. Under

---

(113) CSE (95) 2087.

(114) COM (95) 590 final, not yet published.

LEONARDO, the objectives pursued include greater convergence of the objectives of professional training in the Member States towards the framework outlined for the Union and the improvement of training structures. YOUTH FOR EUROPE III continued to support participation, initiative and solidarity among young people, by involving them, particularly the less-favoured, in the process of European construction.

## **§ 7 - Research**

**223.** 1995 was marked by the rapid implementation of the specific programmes of research and technological development (RTD) of the fourth framework programme adopted in 1994. The calls for proposals for Community research projects were a considerable success among economic operators, with a general increase in the number of proposals, an improvement in their quality and greater participation of industry. The new emphasis of the Specific Programmes on user and market needs, on SMEs participation and on exploitation and transfer of results has improved significantly the impact and relevance of these programmes for industry, citizens and public users.

**224.** The setting up of operational "Task Forces", as announced to the Council in March, is designed to improve the effectiveness of RTD actions by concentrating efforts on common projects of industrial and public interest. The Task Forces cover areas of general interest for the Union, such as "vaccines and viral diseases". Those on "the car of the future", "intermodal transport", "maritime systems of the future", "the new generation of aircraft", "the train of the future and railway systems" will help to respond to the mobility requirements of European citizens. That on "multimedia educational software" will facilitate communication and access by citizens to the new information technologies.

---

## **Annexes**

- 1 - Abbreviations and acronyms**
- 2 - Community provisions cited**
  - EC Treaty
  - Official Journal - references
- 3 - Judgements of the Court of Justice cited**
- 4 - Recent reports, studies and surveys on the single market**

---

## **Annex 1 - Abbreviations and acronyms**

<b>B</b>	
BCC	Business Cooperation Centre
Bc-Net	Business Cooperation Network
<b>C</b>	
CAA	Civil Aviation Authority
CAD	Capital Adequacy Directive
<b>E</b>	
ECU	European Currency Unit
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EIC	European Information Centre
Eurostat	Statistical Office of the European Communities
<b>G</b>	
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
<b>I</b>	
IDA	Interchange of Data between Administrations
<b>M</b>	
Matthaeus Tax	Programme for the exchange of indirect taxation officials
<b>N</b>	
NATO	North Atlantic Treaty Organization
<b>O</b>	
OECD	Organisation for Economic Co-operation and Development
OHIM	Office of Harmonisation in the Internal Market
OJEC	Official Journal of the European Communities
ONP	Open network provision
<b>S</b>	
SHIFT	System to assist the Health controls of Imports of items at Frontier inspection posts from Third countries
SIMAP	Information system on public procurement
SMEs	Small and medium-sized enterprises
<b>T</b>	
TED	Tenders Electronic Daily
TEN	Trans-European Networks

---

TPA	Third Party Access
	<b>U</b>
UNICE	Union des Confédérations de l'Industrie et des Employeurs d'Europe (Union of Industrial and Employers' Confederations of Europe)
	<b>V</b>
VAT	value added tax
VOD	Video-on-demand
	<b>W</b>
WEU	Western European Union
WEAG	Western European Armaments Agency

## Annex 2 - Community provisions cited

### A. EC Treaty <sup>(1)</sup>

#### PRINCIPLES

##### Article 2

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

##### Article 7a

The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 7b, 7c, 28, 57(2), 59, 70(1), 84, 99, 100a and 100b and without prejudice to the other provisions of this Treaty.

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

#### COMMUNITY POLICIES - FREE MOVEMENT OF GOODS - ELIMINATION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES

##### Article 30

Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.

##### Article 34

1. Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.
2. Member States shall, by the end of the first stage at the latest, abolish all quantitative restrictions on exports and any measures having equivalent effect which are in existence when this Treaty enters into force.

##### Article 36

The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

---

(1) As amended by the Treaty on European Union.

Article 37

1. Member States shall progressively adjust any State monopolies of a commercial character so as to ensure that when the transitional period has ended no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the Articles dealing with the abolition of customs duties and quantitative restrictions between Member States.

3. The timetable for the measures referred to in paragraph 1 shall be harmonized with the abolition of quantitative restrictions on the same products provided for in Articles 30 to 34.

If a product is subject to a State monopoly of a commercial character in only one or some Member States, the Commission may authorize the other Member States to apply protective measures until the adjustment provided for in paragraph 1 has been effected; the Commission shall determine the conditions and details of such measures.

4. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying the rules contained in this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialization that will be needed with the passage of time.

5. The obligations on Member States shall be binding only in so far as they are compatible with existing international agreements.

6. With effect from the first stage the Commission shall make recommendations as to the manner in which and the timetable according to which the adjustment provided for in this Article shall be carried out.

**COMMUNITY POLICIES - COMMON RULES ON COMPETITION, TAXATION AND  
APPROXIMATION OF LAWS - RULES ON COMPETITION - RULES APPLYING TO UNDERTAKINGS**

Article 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:



- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

#### Article 86

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### Article 90

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 6 and Articles 85 to 94.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.
3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

### **COMMUNITY POLICIES - COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS - APPROXIMATION OF LAWS**

#### Article 100a

1. By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 7a. The Council shall, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection.

4. If, after the adoption of a harmonization measure by the Council acting by a qualified majority, a Member State deems it necessary to apply national provisions on grounds of major needs referred to in Article 36, or relating to protection of the environment or the working environment, it shall notify the Commission of these provisions.

The Commission shall confirm the provisions involved after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

5. The harmonization measures referred to above shall, in appropriate cases, include a safeguard clause authorizing the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Community control procedure.

#### **COMMUNITY POLICIES - SOCIAL POLICY EDUCATION VOCATIONAL TRAINING AND YOUTH - SOCIAL PROVISIONS**

##### Article 119

Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) that pay for work at time rates shall be the same for the same job.

#### **COMMUNITY POLICIES - ENVIRONMENT**

##### Article 130r(2)

Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements must be integrated into the definition and implementation of other Community policies. In this context, harmonization measures answering these requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure

##### Article 130s

1. The Council, acting in accordance with the procedure referred to in Article 189c and after consulting the Economic and Social Committee, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 130r.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 100a, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt:

- provisions primarily of a fiscal nature;
- measures concerning town and country planning, land use with the exception of waste management and measures of a general nature, and management of water resources;
- measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the preceding subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.

3. In other areas, general action programmes setting out priority objectives to be attained shall be adopted by the Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee.

The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the measures necessary for the implementation of these programmes.

4. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of:

- temporary derogations and/or
- financial support from the Cohesion Fund to be set up no later than 31 December 1993 pursuant to Article 130d.

#### INSTITUTIONS OF THE COMMUNITY - PROVISIONS GOVERNING THE INSTITUTIONS - THE INSTITUTIONS - THE COURT OF JUSTICE

##### Article 169

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

## B. Official Journal - references (2)

1967

Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ L 196, 16/08/67)

1968

Council Regulation (EEC) No 827/68 of 28 June 1968 on the common organisation of the market in certain products listed in Annex II to the Treaty (OJ L 151, 30/06/68)

1970

Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ L 42, 23/02/70)

1976

Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (OJ L 262, 27/09/76)

---

(2) To provide clarity, the references are cited in numerical order; regulations follow upon other types of measures.

**1977**

**Council Directive 77/93/EEC** of 21 December 1976 on protective measures against the introduction into the Member States of harmful organisms of plants or plant products (OJ L 26, 31/01/77)

**1983**

**Council Directive of 83/189/EEC** 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 109, 26/04/83)

**1986**

**Council Directive 86/378/EEC** of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ L 225, 12/08/86)

**Council Regulation (EEC) No 3842/86** of 1 December 1986 laying down measures to prohibit the release for free circulation of counterfeit goods (OJ L 357, 18/12/86)

**Council Regulation (EEC) No 4055/86** of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31/12/86)

**1988**

**Council Directive 88/295/EEC** of 22 March 1988 amending Directive 77/62/EEC relating to the coordination of procedures on the award of public supply contracts and repealing certain provisions of Directive 80/767/EEC (OJ L 127, 20/05/88)

**Second Council Directive 88/357/EEC** of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ L 172, 04/07/88)

**1989**

**Council Directive 89/48/EEC** of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ L 19, 24/01/89)

**First Council Directive 89/104/EEC** of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, 11/02/89)

**Council Directive 89/440/EEC** of 18 July 1989 amending Directive 71/305/EEC concerning coordination of procedures for the award of public works contracts (OJ L 210, 21/07/89)

**Council Directive 89/552/EEC** of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17/10/89)

**Second Council Directive 89/646/EEC** of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ L 386, 30/12/89)

**Council Directive 89/647/EEC** of 18 December 1989 on a solvency ratio for credit institutions (OJ L 386, 30/12/89)

**Council Directive 89/665/EEC** of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30/12/89)

**1990**

**Third Council Directive 90/232/EEC** of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ L 129, 19/05/90)

**Council Directive 90/387/EEC** of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ L 192, 24/07/90)

**Council Directive 90/618/EEC** of 8 November 1990 amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (OJ L 330, 29/11/90)

**Council Directive 90/619/EEC** of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ L 330, 29/11/90)

**Council Directive 90/642/EEC** of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (OJ L 350, 14/12/90)

#### 1991

**Council Directive 91/263/EEC** of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (OJ L 128, 23/05/91)

**Council Directive 91/414/EEC** of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19/08/91)

**Council Directive 91/440/EEC** of 29 July 1991 on the development of the Community's railways (OJ L 237, 24/08/91)

#### 1992

**Council Directive 92/44/EEC** of 5 June 1992 on the application of open network provision to leased lines (OJ L 165, 19/06/92)

**Council Directive 92/49/EEC** of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228, 11/08/92)

**Council Directive 92/50/EEC** of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24/07/92)

**Council Directive 92/51/EEC** of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ L 209, 24/07/92)

**Council Directive 92/96/EEC** of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ L 360, 09/12/92)

**Council Regulation (EEC) No 2081/92** of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208, 24/07/92)

**Council Regulation (EEC) No 3577/92** of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12/12/92)

#### 1993

**Council Directive 93/6/EEC** of 15 March 1993 on the capital adequacy of investments firms and credit institutions (OJ L 141, 11/06/93)

**Council Directive 93/22/EEC** of 10 May 1993 on investment services in the securities field (OJ L 141, 11/06/93)

**Council Directive 93/36/EEC** of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ L 199, 09/08/93)

**Council Directive 93/37/EEC** of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ L 199, 09/08/93)

**Council Directive 93/38/EEC** of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199, 09/08/93)

**Council Directive 93/68/EEC** of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels) and 73/23/EEC (electrical equipment designed for use within certain voltage limits) (OJ L 220, 31/08/93)

**Council Directive 93/99/EEC** of 29 October 1993 on the subject of additional measures concerning the official control of foodstuffs (OJ L 290, 24/11/93)

**Council Regulation (EEC) No 793/93** of 23 March 1993 on the evaluation and control of the risks of existing substances (OJ L 84, 05/04/93)

**1994**

**Council Directive 94/45/EC** of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 254, 30/09/94)

**European Parliament and Council Directive 94/60/EC** of 20 December 1994 amending for the 14th time Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (OJ L 365, 31/12/94)

**European Parliament and Council Directive 94/62/EC** of 20 December 1994 on packaging and packaging waste (OJ L 365, 31/12/94)

**Commission Recommendation 94/79/CE** of 21 December 1993 on the taxation of certain items of income received by non-residents in a Member State other than that in which they are resident (OJ L 39, 10/02/94)

**Council Regulation (EC) No 2100/94** of 27 July 1994 on Community plant variety rights (OJ L 227, 01/09/94)

**Council Regulation (EC) No 3381/94** of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods (OJ L 367, 31/12/94)

**1995**

**European Parliament and Council Directive 95/2/EC** of 20 February 1995 on food additives other than colours and sweeteners (OJ L 61, 18/03/95)

**Council Directive 95/18/EC** of 19 June 1995 on the licensing of railway undertakings (OJ L 143, 27/06/95)

**Council Directive 95/19/EC** of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees (OJ L 143, 27/06/95)

**Council Directive 95/22/EC** of 22 June 1995 amending Directive 91/67/EEC concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ L 243, 11/10/95)

**Council Directive 95/23/EC** of 22 June 1995 amending Directive 64/433/EEC on conditions for the production and marketing of fresh meat (OJ L 243, 11/10/95)

**Council Directive 95/25/EC** of 22 June 1995 amending Directive 64/432/EEC on health problems affecting intra-Community trade in bovine animals and swine (OJ L 243, 11/10/95)

**Council Directive 95/29/EC** of 29 June 1995 amending Directive 91/628/EEC concerning the protection of animals during transport (OJ L 148, 30/06/95)

**Commission Directive 95/31/EC** of 5 July 1995 laying down specific criteria of purity concerning sweeteners for use in foodstuffs (Text with EEA relevance) (OJ L 178, 28/07/95)

**Council Directive 95/38/EC** of 17 July 1995 amending Annexes I and II to Directive 90/642/EEC on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables, and providing for the establishment of a list of maximum levels (OJ L 197, 22/08/95)

**Commission Directive 95/40/EC** of 19 July 1995 amending Directive 92/76/EEC recognizing protected zones exposed to particular plant health risks in the Community (OJ L 182, 02/08/95)

**Commission Directive 95/44/EC** of 26 July 1995 establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 77/93/EEC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections (OJ L 184, 03/08/95)

**Commission Directive 95/45/EC** of 26 July 1995 laying down specific purity criteria concerning colours for use in foodstuffs (OJ L 226, 22/09/95)

**European Parliament and Council Directive 95/46/EC** of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23/11/95)

**Council Directive 95/61/EC** of 29 November 1995 amending Annex II to Directive 90/642/EEC relating to the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (OJ L 292, 07/12/95)

**Commission Decision 95/354/EC** of 14 February 1995 relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89 (Case No IV/M.477 - Mercedes-Benz/Kässbohrer) (Only the German text is authentic) (OJ L 211, 06/09/95)

**Council Decision 95/409/EC** of 22 June 1995 laying down the rules for the microbiological testing by sampling of fresh beef and veal and pigmeat intended for Finland and Sweden (OJ L 243, 11/10/95)

**Council Decision 95/410/EC** of 22 June 1995 laying down the rules for the microbiological testing by sampling in the establishment of origin of poultry for slaughter intended for Finland and Sweden (OJ L 243, 11/10/95)

**Council Decision 95/411/EC** of 22 June 1995 laying down the rules for the microbiological testing for salmonella by sampling of fresh poultrymeat intended for Finland and Sweden (OJ L 243, 11/10/95)

**Council Decision 95/468/EC** of 6 November 1995 on a Community contribution for telematic interchange of data between administrations in the Community (IDA) (OJ L 269, 11/11/95)

**Decision 95/3052/EC of the European Parliament and of the Council** of 13 December 1995 establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community (OJ L 321, 30/12/95)

**Council Regulation (EC) No 1683/95** of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14/07/95)

**Council Regulation (EC) No 2317/95** of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States (OJ L 234, 03/10/95)

## Annex 3 - Judgements of the Court of Justice cited

<b>Judgement of the Court of 29 June 1995</b> .....	<b>§ 30</b>
<b>Joined Cases C-109/94, C-207/94 and C-225/94</b>	
Reports of cases 1995 pages 0000	
Commission of the European Communities v Hellenic Republic	
Failure of a Member State to fulfil its obligations	
Directives 618/EEC, 88/357/EEC and 90/619/EEC - Non-transposition - Insurances.	
<b>Judgement of the Court of 9 February 1995</b> .....	<b>§ 81</b>
<b>Case 412/93</b>	
Reports of cases 1995 pages I-0179	
Société d'importation Edouard Leclerc-Siplec v TF1 Publicité sa and M6 Publicité sa	
Reference for a preliminary ruling: Tribunal de Commerce de Paris - France	
Televised advertising - Free movement of goods and services.	
<b>Judgement of the Court of 23 February 1995</b> .....	<b>§ 81</b>
<b>Joined Cases C-54/94 and C-74/94</b>	
Reports of cases 1995 pages I-0391	
Criminal proceedings against Ulderico Cacchiarelli and Gino Stanghellini	
Reference for a preliminary ruling: Pretura circondariale di Macerata - Italy	
Council directives 76/895/EEC and 90/642/EEC - Maximum permissible levels of pesticide residues on or in potatoes.	
<b>Judgement of the Court of 28 March 1995</b> .....	<b>§ 81</b>
<b>Case C-324/93</b>	
Reports of cases 1995 pages I-0563	
The Queen v Secretary of State for Home Department, ex parte Evans Medical Ltd and McFarlan Smith Ltd	
Reference for a preliminary ruling: High Court of Justice, Queen's Bench Division - United Kingdom	
Free movement of goods - Importation of a narcotic drug (diamorphine).	
<b>Judgement of the Court of 6 July 1995</b> .....	<b>§ 81</b>
<b>Case C-470/93</b>	
Reports of cases 1995 pages 0000	
Verein gegen Unwesen in Handel und Gewerbe Köln e.V. v Mars GmbH	
Reference for a preliminary ruling: Landgericht Köln - Germany	
Free movement of goods - Measures having an effect equivalent to quantitative restrictions - Presentation of a product likely to restrict freedom to fix retail prices and mislead the consumer.	
<b>Judgement of the Court of 14 February 1995</b> .....	<b>§ 135</b>
<b>Case C-279/93</b>	
Reports of cases 1995 pages I-0225	
Finanzamt Köln-Altstadt v Roland Schumacker	
Reference for a preliminary ruling: Bundesfinanzhof - Germany	
Article 48 of the EC Treaty - Principle of equal treatment - Taxation of the income of non-residents.	
<b>Judgement of the Court of 11 August 1995</b> .....	<b>§ 135</b>
<b>Case C-80/94</b>	
Reports of cases 1995 pages 0000	
G.H.E.J. Wielockx v Inspecteur der directe belastingen	
Reference for a preliminary ruling: Gerechtshof's-Hertogenbosch - Netherlands	
Article 52 of the EC Treaty - Requirement of equal treatment - Tax on non-residents' income.	



**Judgement of the Court of 24 January 1995 ..... § 162****Case C-359/93**

Reports of cases 1995 pages I-0157

Commission of the European Communities v Kingdom of the Netherlands

Tender notices for public supply contracts

Review procedure - Notification - Technical specifications.

**Judgement of the Court of 4 May 1995 ..... § 162****Case C-79/94**

Reports of cases 1995 pages I-1071

Commission of the European Communities v Hellenic Republic

Failure of a Member State to fulfil its obligations

Directive 77/62/EEC - Framework agreement for the exclusive supply of dressing material for use in Greek hospitals and by the Greek army.

**Judgement of the Court of 17 May 1990 ..... § 196****Case 262/88**

Reports of cases 1990 pages I-1889

Douglas Harvey Barber v Guardian Royal Exchange Assurance Group

Reference for a preliminary ruling: Court of Appeal - United Kingdom

Social policy - Equal payment for men and women - Compulsory redundancy - Early payment of retirement pension.

## Annex 4 - Recent reports, studies and surveys on the single market

*(The following list does not purport to be exhaustive. It is a selection of publications dealing with the practical operation of the single market in general which have been brought to the attention of the Commission during 1994. It does not include the many academic works which are published regularly in this field).*

- *Reports of the Competitiveness Advisory Group (Ciampi Group)*, June and December 1995.
- *Report of The Group of Independent Experts on Legislative and Administrative Simplification. (The "Molitor" Report)*. Office for Official Publications of the European Communities, 21.06.95; COM (95) 288/2 final.
- *Opinion on the Single Market in 1994*. The Economic and Social Committee of the European Communities. 23.11.95; CES (95) 1310.
- *The European Observatory for SMEs*. Comments of the Commission on the third Annual Report. Office of Publications of the European Communities; COM (95) 526 final.
- *Releasing Europe's Potential through Targeted Regulatory Reform*. Union of Industrial and Employers' Confederations of Europe. October 1995.
- *A Europe that Works*. The Confederation of British Industry, June 1995.
- *Barriers to Trade in Chemicals in the Single Market*. The UK Department of Trade and Industry, July 1995.
- *Single Market Implementation Monitoring Report*. The UK Simpler Trade Procedures Board, June 1995.
- *Ireland, The European Union and Economic Integration: A Business Perspective*. IBEC, May 1995.
- *Generic Study on Standards, Testing and Certification Barriers in Non-Harmonised Areas of the Single Market*. The UK Department of Trade and Industry, 1995.